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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 16th March 1954

S.R.O. 1029.—Whereas the election of Shri Kanwar Tej Singh, as a member of the Legislative Assembly of the State of Rajasthan, from the Amber 'A' constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Lallu Chand s/o Shri Chhagan Lal, Pleader, resident of Bhulera, District Jaipur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act the Election Commission hereby publishes the said Order of the Tribunal.

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION No. 280/12 OF 1952

Shri Lallu Chand—*Petitioner.*

Versus

Kr. Tej Singh and Others—*Respondents.*

PRESENT:

The Hon'ble Mr. Justice K. K. Sharma, *Chairman.*

Mr. A. N. Kaul, *Member.*

Mr. P. L. Shome, *Member.*

Mr. B. L. Lohadia for the petitioner.

Mr. C. L. Agrawal for Respondent No. 1, Kr. Tej Singh.

ORDER

Dated the 31st July 1953

(PER HON'BLE JUSTICE SHARMA, CHAIRMAN, AND SHRI KAUL, MEMBER)

Lallu Chand, petitioner in this election petition, was a candidate for election to the Rajasthan Legislative Assembly from the Amber "A" Constituency. His nomination paper was rejected by the Returning Officer at the scrutiny and he has thereupon filed this election petition on the ground that his nomination paper was improperly rejected and that such rejection has materially affected the result of the election.

Respondent No. 1 Kumar Tej Singh, (hereinafter referred to as the contesting respondent) is the returned candidate, and he alone contests the petition. The other respondents, though duly served, have not appeared before the Tribunal. The contesting respondent at the outset raised a preliminary objection to the effect that the Tribunal was not properly constituted. The said objection was taken up as a preliminary issue, and after hearing the learned counsel for both the parties and the learned Advocate General of the State of Rajasthan under section 89 of the Representation of the People Act, 1951 (hereinafter referred to as the Act), the Tribunal, on the 21st January, 1953, overruled the said objection. The judgment on the said preliminary objection is appended hereto as Annexure "A".

The contesting respondent filed a written statement traversing the pleas raised in the election petition and raising some additional pleas on which he submitted that the nomination paper of the petitioner had been rightly rejected, and ought to have as well been rejected on the additional grounds mentioned in his additional pleas. The nature of the pleas need not be narrated here *in extenso*, as they will be evident from the issues framed in the case, which are as follows:—

ISSUES

No. 1. Was the nomination paper of the petitioner improperly rejected on the ground that he did not strike off the words "House of the People" (Lok Sabha) from the list of the four Houses given at the top of the nomination paper?

No. 2. If so, was the result of the election materially affected by this rejection?

No. 3. Whether the signatures of the proposer and the seconder of the nomination paper are not genuine? If so, what is its effect upon the election petition?

No. 4. Whether Shri Nahar Singh and Thoraji were necessary parties to the Petition? If so, what is the effect of their not being made parties to the petition on the election petition?

No. 5. Whether the election petition was not presented within the time prescribed by Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951? If so, what is its effect?

No. 6. Whether there were three parts of the electoral roll of Phulera town and the serial number 178 appeared in each of them? If so, what is the effect upon the election petition of the omission of any further description of the electoral roll, besides the description—"Phulera Town"?

No. 7. Whether the nomination paper was invalid on account of the fact that no separate writing was made about the appointment of an election agent apart from the declaration signed in the nomination paper? If so, what is its effect?

No. 8. Whether the objections giving rise to issues Nos. 3, 6 and 7 can be taken in these proceedings when they did not form the ground of rejection of the petitioner's nomination paper by the Returning Officer?

Out of the above-mentioned issues, the issues Nos. 4, 5 and 6, which were raised at the instance of the contesting respondent, were given up and not pressed by his learned counsel at the time of the arguments. Issue No. 8, raised at the instance of the petitioner, was also not pressed. So these issues need not be considered. Issues Nos. 1, 2, 3 and 7, only therefore, remain for consideration.

We shall deal with issues Nos. 1 and 2 first and then with issue No. 7, and lastly with issue No. 3, which is the most hotly contested issue in the case.

ISSUE No. 1.—The Returning Officer has rejected the nomination paper of the petitioner on the ground that the candidate had failed to mention whether he was standing for the State Legislative Assembly or the House of the People, as none had been struck off.

On a reference to the original Nomination Paper Ex. P. 1, it appears that the petitioner wrote "Rajasthan" before the words "Vidhan Sabha" in the third line of the names of the four legislative bodies mentioned at the top of the Nomination Paper. The names of the three other bodies—Loka Sabha, Vidhan Parishad and Electoral College—were not struck off. But the addition of the word "Rajasthan" before "Vidhan Sabha" was sufficient indication of his intention that he was standing for the Rajasthan Vidhan Sabha, *i.e.*, the Rajasthan Legislative Assembly

and there was no ground for any doubt or ambiguity in regard thereto. The candidate also mentioned in his Nomination Paper the name of the Constituency (Item No. 1)—as Amer "A", which was a State Assembly Constituency and not a House of the People Constituency. Receipts and other papers attached to the original Nomination Paper Ex. P. 1, and signed by the Returning Officer also show that the deposit receipt was for Rs. 250/- (not Rs. 500/- as in the case of House of the People), and was in respect of the election to the Rajasthan Legislative Assembly Amer "A" Constituency, and the receipt given by the Returning Officer acknowledging the receipt of the Nomination Paper was for Amer "A" Legislative Assembly Constituency. Therefore, there was no doubt about the fact that the petitioner was standing for Amer "A" Constituency of the Rajasthan Legislative Assembly. The mere fact that he did not strike out the words "Loka Sabha" or other alternatives did not invalidate the Nomination Paper. Even if it be assumed to be a defect, it was of a most technical character and not at all a substantial defect, and the Returning Officer was not justified in rejecting the Nomination Paper on this ground. Learned counsel for the contesting respondent himself did not seriously contend that the Nomination Paper was not improperly rejected on this ground. The finding on the issue, therefore, is that the Nomination Paper of the petitioner was improperly rejected on the ground that the petitioner had failed to mention whether he was standing for the State Legislative Assembly or the House of the People, as none had been struck off.

ISSUE No. 2.—The effect of the improper rejection of a Nomination Paper on the result of the election has formed the subject matter of decisions of several Election Tribunals. We have also had to consider this point in a few cases. The trend of all the decisions is that the improper rejection of a Nomination Paper raises a presumption that the result of the election has been materially affected. But the said presumption is rebuttable. We have ourselves held so in the cases of Pt. Harish Chandra *vs.* Raja Man Singh and others (Election Petition No. 6 of 1952), decided on 24th March, 1953, (1), and Ram Singh *vs.* Shri Hazari Lal and others (Election Petition No. 1 of 1952), decided on 9th May, 1953, (2). In the former case, of course, under the special circumstances of the case we held that the presumption was rebutted. In the present case, however, we do not find any such special circumstances from which we might infer that the presumption has been rebutted. The respondent No. 1 raised a plea that the result of the election had not been materially affected because the petitioner was only a covering candidate for the Congress candidate, and as the main Congress candidate had been defeated by the contesting respondent by a substantial majority of votes, the petitioner had no chance of being elected, even if his nomination paper had not been rejected. The petitioner has denied in his deposition that he was a covering candidate for the Congress party or that he had carried on propaganda for the said party's candidate. On the other hand, he has said that he being a lawyer, residing and practising within the Constituency for some years, and being an influential resident of the place having a large clientele and relations and friends, had every chance of being returned, if he was allowed to contest. The contesting respondent has not adduced any evidence, beyond his statement in the written statement and suggestions in course of the cross-examination of the petitioner to prove that the result of the election would not have been materially affected, even if the petitioner's Nomination Paper had not been rejected. The contesting respondent did not even examine his ownself. There is practically no evidence to rebut the presumption arising out of the improper rejection of the petitioner's Nomination Paper. Mr. C. L. Agrawal, appearing for the contesting respondent, was fair enough not to press this point. Our finding, therefore, is that by the rejection of the petitioner's nomination paper, the result of the election has been materially affected.

ISSUE No. 7.—The contention of the contesting respondent is that even if the Nomination Paper of the petitioner was improperly rejected on the ground which is given in the order of the Returning Officer, his Nomination Paper was liable to rejection on the ground that he had not appointed an election agent in accordance with section 40 of the Act, and, therefore, there has been a failure to comply with the provisions of section 33 (3) of the Act which requires that every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the Candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under the Act for the appointment, and who shall be named in the declaration. It has been argued that there has been no legal appointment of the election agent inasmuch as it was not made in writing before the nomination paper

(1) Published in *Rajasthan Gazette, Extraordinary*, Vol. 5, No. 20, dated May 1, 1953.

(2) *Rajasthan Gazette, Extraordinary*, Vol, 5, No. 49, Part I, July 6, 1953.

was delivered, and so the declaration under section 33 (3) is not in order. Mr. Agrawal laid special stress upon the words "shall appoint in writing either himself or some one other person to be his election agent". It was argued that even though the petitioner appointed his ownself as his election agent, it was necessary for him to make a separate writing with regard to that appointment, which was not done, and, therefore, his nomination paper ought to have been rejected on this ground. To our mind section 40 of the Act only requires that there should be some writing which might indicate the appointment of his ownself as his election agent by the candidate. No particular form of such writing is given in the Act. In case a candidate appoints some one other person as his election agent, the form of appointment is given in the Rules as Form V-A. But where the candidate appoints his ownself as his agent, no such form is given. All that is required is that a document should come into existence before the delivery of the nomination paper, which unequivocally shows that the candidate has appointed his ownself as his election agent. In the present case, the petitioner signed his declaration form about his appointment as his own election agent before the delivery of the nomination paper. This declaration was in writing and signed by the petitioner. To our mind, it completely fulfilled the conditions laid down in section 40 of the Act that a candidate would appoint his election agent in writing signed by him before delivery of his nomination paper. This has been the subject matter of discussion in the case of Din Singh and others *vs.* Kapildeo and others (Election Petition No. 4 of 1952) decided on the 9th of May, 1953, (3) where we took the same view as we are taking in this case. Of course, our brother Sri Shome differed from this view of ours and wrote a dissenting judgment, and he sticks to the same view in this case. With due respect to our learned brother, however, we are unable to take a different view from that which we took in the case of Din Singh quoted above. We are supported in our view by a decision of the Assam Tribunal in the case of Hazi Nasimuddin and Sivaprasad Sarma *vs.* Dandiram Dutta and others (Election Petitions Nos. 21 and 48 of 1952) reported in the *Gazette of India, Extraordinary,* Part I—Section I, dated the 11th November, 1952, page 2396 b. Our finding on this issue is, therefore, in the negative.

ISSUE No. 3.—This issue has been very hotly contested. According to section 36 (2) (e) of the Act, the Returning Officer may refuse any nomination on the ground that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud. Thus on the language of this clause it is for the objector to prove that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud. The only evidence which the contesting respondent has produced on this point is that of an expert, Mr. Ugrasen Kasyap, and of one Thakur Fateh Singh. The latter witness has filed a number of receipts Exs. R.1/4(a) to R.1/34, which bear the signatures of Sohanpal, and has deposed that the signature of Sohanpal on the nomination paper Ex. P. 1 was not in the handwriting of Sohanpal. The contesting respondent also summoned the file of the case No. 63/265 instituted on 30th December, 1949, in the Court of Assistant Record Officer, Jaipur, which contains a statement of Sohanpal, Ex. R. 1/35, bearing his signature. The contesting respondent also summoned another file from the Court of the Assistant Record Officer, Jaipur, which contains a statement of Daya Chand bearing his signature. The expert, Mr. Kasyap, first of all submitted his opinion about the signatures of Sohanpal and Daya Chand on the nomination paper, Ex. P. 1, on the 2nd of February, 1953. Thereafter he submitted another report dated 8th February, 1953. The first mentioned report is Ex. R.1/59 and the last-mentioned Ex. R.1/60. The expert also took enlarged photographs of the two questioned signatures on Ex. P. 1 and of the admitted signatures of Daya Chand and Sohanpal on Exs. R.1/2 and R.1/35 respectively. A number of signature of Sohanpal and Daya Chand were taken before the Tribunal. Those of Daya Chand are Ex. R.1/4 and of Sohanpal Ex. R.1/37. Photographs were also taken by Mr. Kasyap of the signature and writing purporting to be an endorsement of the service of summons on the back of the summons of Sohanpal dated 7th February, 1953, Ex. P.2. Photographs were also taken of the petitioner Laloo Chand's name on the nomination paper Ex. P. 1 and also of a writing obtained from Laloo Chand before the Tribunal, Ex. R.1/1. Enlargements were also made of these photographs.

On behalf of the petitioner the evidence in rebuttal consists of the statements of Shri Prakash Chandra Kala, P.W. 2, Shri Kapoor Chand Patni, P.W. 3, and an expert, Shri Kishan Beharilal, P.W. 4. Daya Chand and Sohanpal were examined as court witnesses. Sohanpal appears as proposer and Daya Chand as seconder of the petitioner's nomination on the Nomination Form, Ex. P. 1. Both these stated before the Tribunal that Ex. P. 1 bore their signatures. The two wit-

(3) Published in *Rajasthan Gazette Extraordinary,* Part I, Vol. 5, No. 54, dated July 7, 1953.

nesses, Shri Prakash Chandra P.W. 2 and Shri Kapoor Chand P.W. 3, swore that Sohanpal signed the nomination paper Ex. P. 1 as proposer and Daya Chand as seconder of the petitioner's nomination in their presence. Both of them are legal practitioners. Mr. Krishan Beharilal also took the photographs of the two questioned signatures and of the specimen signatures taken before the Tribunal of Daya Chand and Sohanpal. He also made enlargements of the photographs.

The opinion of Mr. Kasyap is that not only the questioned signatures of Daya Chand and Sohanpal on Ex. P. 1 were not genuine, but that both of them were made by the petitioner Laloo Chand himself. The opinion of Mr. Krishan Behari Lal, on the other hand, is that the questioned signatures of Sohanpal were in the handwriting of the same person who has made the specimen signatures on Ex. R.1/37. Similarly his opinion is that the questioned signatures of Daya Chand on Ex. P. 1 were in the handwriting of the same person who had written the specimen signatures on Ex. R. 1/4. He has also given an opinion that they do not appear to be in the handwriting of the person who had made the specimen writing Ex. R. 1/1 before the Tribunal. He filed two reports Exs. P. 11 and P. 12.

It was argued by Mr. C. L. Agrawal that apart from any technical considerations, the questioned signature of Sohanpal was altogether different from his usual signatures on Exs. R.1/4 (a) to R.1/35, inasmuch as the *"sa"* and *"la"* in the questioned signature were in Marwari style, whereas in the admitted signatures they were in the Devnagari style. It was argued that on the summons Ex. P. 2 Sohanpal had tried to write *"sa"* and *"la"* in Marwari style in order to show that the questioned signature was his, but he had failed in his attempt. Similarly, in his specimen signatures Ex. R.1/37, Sohanpal had tried to write down *"sa"* and *"la"* in Marwari style, but there too he had altogether failed to give them the appearance of *"sa"* and *"la"* in the questioned signature. The same argument was made in the case of Daya Chand, and it was submitted that his admitted signatures on the statement in Assistant Record Officer's file, Ex. R.1/2 were in Marwari style, whereas his questioned signature was in Devnagari style. It was further argued that in his specimen signatures Ex. R.1/4 Daya Chand had tried to make those signatures correspond to the questioned signature, but there too the attempt had failed, as the two *"da's"* in the questioned signature were not similar to the *"da's"* in the specimen signatures. As regards the remaining letters *"na"* and *"pa"* in the signature of Sohanpal, it was argued that they were also different in formation from the *"na's"* and *"da's"* in Exs. R.1/4 to R.1/35, and of the specimen signatures Ex. R.1/37. In the case of Daya Chand also, it was argued that there was glaring discrepancy between *"ya"* and *"cha"* in the disputed signature on the one hand and Exs. R.1/4 and R.1/2 on the other.

On behalf of the petitioner it was admitted by Mr. B. L. Lohadia that *"sa"* and *"la"* in the disputed signature of Sohanpal were in the Marwari style, and were different from the *"sa"* and *"la"* in signatures (Ex. R.1/4 to R.1/35) of Sohanpal. But it was argued that Sohanpal knew Marwari Script also, as appears from his specimen singnature Ex. R.1/37, and so if he chose to write *"sa"* and *"la"* in Marwari style in the disputed signature, it did not necessarily follow that they were not genuine. In reply to the argument of Mr. C. L. Agrawal that there were graceful curves in the *"sa"* of the disputed signature of Sohanpal whereas there were no such curves in the *"sa"* of the specimen writing in Ex. R.1/37, it was argued that it was on account of the fact that while putting down his signature on Ex. P. 1, Sohanpal wrote quite freely, at the time of his giving specimen signatures before the Tribunal, he was obsessed with the idea that his genuine signature was being challenged, and so he was a little less free, and somewhat more halting in making his signatures. It was also argued that the conditions under which he made his signature in Ex. P. 1 were not the same as the conditions under which he gave his specimen signatures. It was further argued by learned counsel for the petitioner that the disputed signature was not of the style in which forged writing usually appears; for example, it was argued that the disputed signature should not have been so free and natural as they were, if their writer had an idea before his mind that he was forging the signature, which might be detected, and he might be answerable for his deed. If the disputed signatures were forged, they would have been more halting with much less speed and much more awkward than they are.

We have considered the arguments of both the learned counsel, and have, with care, examined the different documents and their ordinary and enlarged photographs, in the light of the reasons given by the experts. A number of authorities were produced on behalf of both the parties. Some of them were altogether beside the mark. We shall, however, discuss all the authorities cited by the parties below.

In Barindra Kumar Ghose and others *v.* Emperor (4), cited by learned counsel for the petitioner, comparison of the hand-writing in question had not been made with the admitted writing by an expert. Only the court itself compared the two signatures, and came to the conclusion that the disputed writing was in the handwriting of one or the other accused. It was rightly held that this method was hazardous, and the opinion of the Judge could not be acted upon.

In Jitendra Nath Gupta and others *v.* Emperor (5), the expert compared disputed writings with admitted or proved writings. The documents were found in the possession of the accused and were discovered along with other writings at the searches. Under these circumstances the opinion of the expert was relied upon. Certain principles were laid down about the value of expert evidence. They are as under:—

> "Expert opinion in the case of handwriting as in other matters has to be received with caution. A comparison of handwriting is something hazardous and inconclusive, and as a mode of ascertaining truth, should be made with care and caution in the light of assistance that may be available in the shape of expert evidence or arguments on behalf of parties concerned. No hard and fast rule can possibly be laid down as to the best method of arriving at a proper conclusion on the question of similarity of handwriting. The rejection even *in toto* of an expert's opinion will not exonerate the Court from the duty of coming to an independent finding on the question of an authorship of a handwriting; the Court has to examine the opinion and to come to its own decision. The most important things are to examine the general characteristics, formation of letters, fixed pen-habits and mannerisms, and discern the identity of the writer. The identity or resemblance in handwriting has to be found out on the value of the effect of various considerations arising from individual characteristics and idiosyncracies which have been embodied in technical language of experts. The general appearance or pictorial effect is always of assistance in identifying a handwriting. A correct conclusion in any case is based only upon a combination of common qualities and individual characteristics in sufficient number so that they would not all accidentally coincide into writings by different writers."

In Sarojini Dassi *v.* Hari Das Ghose (6), it was held that—

> "A comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive, and especially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts. A comparison of writings has consequently been deemed a mode of ascertaining the truth which ought to be used with very great caution."

In that case it does not appear that documents were given to any handwriting expert for the purpose of comparison of the disputed writing with the admitted writing. This ruling, therefore, has not much bearing on the point. Only the following observations may be quoted with profit:—

> "Now it may be conceded that if two signatures are exactly identical, there is room for suspicion that the one in question may be a copy or careful imitation of the genuine signature. It is a fact well-known and may be readily verified that no two signatures, actually written in the ordinary course of writing them are precisely alike.
>
> The character of a person's signatures is generally of uniform appearance, and the resemblance between one and another signature of the same person is thus apparent but the coincidence is seldom known where a genuine signature of a person superposed over another genuine signature of the same person is such a facsimile that one is a perfect match to the other in every respect. There is generally diversity in the makes of the pen, the size of the letter, the level of the signature and space it occupies, that stands as a guard over the genuine signature and characterises it as the true signature."

There was a mass of direct and circumstantial evidence which pointed unmistakeably to the genuineness of the will in that case, and that, to a great extent

(4) I.L.R. XXXVII Calcutta 467.

(5) A.I.R. 1937 Calcutta 99.

(6) A.I.R. 1922 Calcutta 12.

appears to have influenced the learned Judges in coming to the finding which they recorded.

In Lila Sinha *v.* Kumar Bijoy Protap Deo Singh and others (7) not one of the letters in the signature on the will resembled the same letters as were used in the signatures admitted to be in the handwriting of the Kumar (testator). Not only were the letters dissimilar, but the words which composed the signatures, instead of being somewhat shaky and irregular (as was the case with the normal signatures of the Kumar) were written in a firm hand, and in a copy-book style. Counsel for the propounder frankly admitted that the signature on the will was not in the Kumar's normal handwriting. The nervous system of the testator was not that of a very intelligent man, according to the medical evidence, three hours before he is said to have executed the will. There was evidence that his hands at all times used to shake involuntarily, and when he was writing the hand which he used was seen to tremble. The medical evidence also showed that it was impossible that a man of Kumar's habits could write such a hand. No expert was examined in the case, and on the above considerations it was held that the will was a forgery. It was observed that:

> "In a case where the character of the signature is such that the Court is satisfied that the signature is not that of the alleged testator, it would not be correct to say that the Court ought not to act upon its conviction and pronounce against the document as a valid testamentary disposition, but in a case where witnesses have positively affirmed that the testator did in fact execute the will in their presence, the Court will be slow to hold the document to be a forgery unless evidence is to be found *aliunde* which tends to confirm the conclusion at which the Court has arrived independently and from a consideration of the nature of the signature by which the testator is alleged to have executed the will."

In Ramanlal Rathi *v* The State (8), the prosecution evidence itself showed that the signatures were genuine, but the experts said that they were not. Under the circumstances, the experts' evidence was not acted upon.

In Gobindjee Madhwajee and Co. Ltd., *v* C. J. Smith and another (9), no handwriting expert was produced to prove that the signatures on endorsement on the summons were genuine. One of the parties contended that in the absence of expert evidence, signatures on the endorsement could not be said to be genuine. It was, however, held that it was not necessary, as conclusions could not be based entirely upon expert evidence.

In Parsad Mahto and other *v* Mt. Jasoda Koer (10), apart from a comparison by hand-writing experts, the date of printing of the forms on which the receipts in dispute appeared, and the variation between the manuscript and the printed serial numbers that appeared on the disputed forms were taken into consideration, and the conclusion was based on the cumulative effect of the circumstances present in the case. It was held that:

> "Where a case against a person depends upon a comparison of the handwriting, the Court is competent to use its own eyes for the purpose of deciding whether certain handwritings placed before it are similar or not. To hold to the contrary would be to deprive the Court of the function for which it exists of deciding disputed facts placed before it. The opinion of experts is only a piece of evidence. The opinion of the Judge is the decision in the case. A Judge has to be satisfied that he is entitled to take such assistance upon evidence as is available in the circumstances of each case."

In Fakir Mahomed Ramzan *v.* Emperor (11), the disputed thing was a fingerprint, and, therefore, not much assistance can be taken from the authority in the present case.

In Ladharam Narsinghdas *v* Emperor (12), it was held that:

> **"The Court should satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy itself of the value of other evidence."**

(7) A.I.R. 1925 Calcutta 768.
(8) A.I.R. 1951 Calcutta 305.
(9) A.I.R. 1928 Patna 568.
(10) A.I.R. 1937 Patna 328.
(11) A.I.R. 1936 Bombay 1951.
(12) A.I.R. 1945 Sind 4.

In that case, some receipts were attacked as forged, and the expert, Mr. Stott, gave his opinion that he was quite sure and definite that the writer of the admitted signature was not the writer of the disputed signature. The expert gave very detailed reasons, which impressed the Court. There was the direct evidence of the person, who was alleged to be the writer of the disputed writing, that it was not his writing, and then there were previous statements of the appellant and other circumstances in conjunction with which it was held that the writing was forged.

In Wakeford *v* Lincoln Bishop (13), it was held by their Lordships of the Privy Council that:

> "Expert evidence on matters of handwriting ought not to definitely point out that anybody wrote a particular thing. The expert is only to point out the similarities to the Court which has to determine whether a particular writing is to be assigned to a particular person."

In Mohammad Zia Ullah Khan *v* Rafiq Mohammad Khan and others (14), handwriting experts were produced by both the parties, and each supported the case of the party which produced him. It was held that such expert evidence was of little help. It was a case of will, and the burden of proof of the will was on the propounder, and under the circumstances it was held that the will was not genuine.

In Mt. Sadiqa Begam *v* Ata Ullah (15), each expert gave evidence in favour of the party by whom he was called, and it was held that such evidence could carry little weight, for one expert was contradicted by the other. In that case an unusual form of signature was adopted, and it was observed that if a forgery was to be perpetrated, an unusual form of signature would not have been adopted by the forger, and the disputed deed was held to be genuine.

In H. Mansel Pleydell of Simla *v* Emperor (16), the expert was not a handwriting expert but a medical expert, and so this ruling has little bearing on the point before us.

In In re B. Venkata Row (17), there was no direct evidence on the record that the accused was the forger. The conviction was based on the evidence of a hand-writing expert coupled with certain other evidence which was relied upon in corroboration of expert evidence. There were resemblances between the handwriting of the accused and the disputed writings in some respects. But it was held that that was not sufficient. It was further observed that it was unfortunate that the expert knew what the prosecution wanted to prove.

In Lal Singh Didar Singh *v* Guru Granth Sahib and others (18), the question was as to when a certain portion of the plaint was scored off, and not whether a particular hand-writing was in the handwriting of a particular person. That ruling, therefore, has no bearing on this case.

In Saqlain Ahmad *v*. Emperor (19), it was held that the value of the expert evidence depended largely on the cogency of the reasons on which it was based, and in general it could not be the basis of conviction unless it was corroborated by other evidence.

In In re Basrur Venkata Row (20), it was held that:

> "In cases where a conclusion is based regarding the authorship of a forged document, on a comparison of handwriting, the expert should generally be able to point to marked peculiarities in the ordinary writing of the accused, which are re-produced in the forged document, the accused being unable to avoid them.
>
> Where the handwriting of the accused is not in any way peculiar or eccentric, particular weight cannot be attached to evidence of comparison.
>
> The fact that in a comparison of handwriting by an expert, all the standard writings are put together separately from the disputed ones detracts

(13) A.I.R. 1921 Privy Council 168.

(14) A.I.R 1939 Oudh 213.

(15) A.I.R. 1933 Lahore 885.

(16) A.I.R. 1926 Lahore 313.

(17) I.L.R. XXXVI (1913) Madras 159.

(18) A.I.R. 1951 Pepsu 101.

(19) A.I.R. 1936 Allahabad 165

(20) (1912) XIV Indian Cases 418.

from the weight to be attached to the expert testimony, as in this way he comes to know before-hand what the prosecution wishes to be proved.

A conviction should not ordinarily be based on the mere evidence afforded by a comparison of handwriting by an expert without substantial corroboration."

In M/S The Banarsi Stores v. President of the Union of Indian Republic for India through Secy. Rly Board, New Delhi and others (21), the evidence of the expert was not acted upon in the face of the documentary evidence to prove that the signatures of one Radhey Lal on the risk note were genuine. It was observed that the opinion of a handwriting expert was seldom conclusive, and no importance could be attached to the opinion of the handwriting expert examined in the case.

Mr. C. L. Agrawal relied upon the following address to the Jury given in "The Problem of Proof" by Osborn, 1926 Edition, at page 299, in order to show what is the value of the testimony of a handwriting expert:—

"Gentlemen of the Jury:—

You have heard the violent general criticism of expert testimony, but it has not been so much criticism of the testimony in this particular case as of expert testimony as a whole. We desire especially that you should carefully consider this testimony. We have brought this expert testimony here for the purpose of assisting you in seeing, and correctly interpreting the physical facts in connection with these documents. That is its purpose, to assist in showing the facts. In this connection it is highly important that you should not be deceived as to just what this testimony is. From the references made to it by the opposition one might be led to think of it as something brought in here to deceive you or be foisted upon you, and it is suggested at least that you would be helpless in the matter and could not in any way understand the significance of the special testimony, or be able to recognize its value or discover its worthlessness.

What relation does this expert testimony have to this particular case and to the problem that you have to solve is the real question for us. The deceptive nature of the criticisms of this testimony becomes quite apparent when it is clearly understood just what it aims to do. Let us see what it is.

On this particular subject a qualified specialist comes before you and is permitted by the law to give an opinion for your assistance, but not necessarily for your adoption. In the old days this testimony ended with the opinion, but as education became more general and intelligence increased, the law has said that a witness of this kind can not only give an opinion but he can give the reasons for the opinion to those who are to decide the case. This at once distinguishes this testimony from testimony regarding insanity and medicine and various questions where it is impossible for those of us not technically trained to follow the witness."

From a perusal of all these authorities, the following principles emerge:—

The evidence of an expert should not be dismissed summarily or should not be condemned without going into the reasons given by him. If the court is satisfied that the reasons given by the expert are so strong that they outweigh other evidence to the contrary, by all means the expert's evidence may be accepted in preference to other evidence produced to the contrary. But there must be very strong and cogent reasons to influence the court in rejecting direct evidence. Difficulty arises still more when there are experts on both the sides, and they give contradictory opinions. Their evidence becomes still more suspicious when it is found that each expert knows what the party calling him wanted to be proved. In such a dilemma, when there is direct evidence before the Court, which there is no reason to disbelieve, the safer course for the Court is to accept the evidence of that expert which is supported by direct evidence. Ordinarily the court should be slow to act upon the uncorroborated testimony of an expert.

In this case, there is no direct evidence whatsoever on behalf of the contesting respondent on whom the burden lay of proving that the signature of the proposer and seconder on the nomination paper Ex. P. 1 were not genuine. Even the contesting respondent has not come into the witness box to enlighten the court as to how he came to know that the disputed signatures were not genuine. He

(21) A.I.R. 1953 Allahabad 318.

verifies paragraph 14 under the additional pleas relating to this matter out of his knowledge and belief. He does not say whether the knowledge was personal or derived from some other person. If he had come into the witness box, it would have been possible for the Tribunal to know whether his knowledge was personal or derived from some other person, in which case the Tribunal would have been able to find out the names of those persons, and examine them, if necessary. All that the Tribunal can infer, under the circumstances, is that the said statement is based upon a mere suspicion of the contesting respondent. We cannot believe that he did not tell the expert what he wanted to be proved. The expert, Mr. Kasyap, says that the contesting respondent did not make any suggestion to him that the disputed signatures on the nomination paper Ex. P. 1 had been written by Laloo Chand himself; but on the contrary the suggestion was made by his ownself. He also says that all that he was told was that he was to give his honest opinion as to whether the disputed signatures resembled or not with certain signatures delivered to him. If the different writings were handed over to Mr. Kasyap without any suggestion as to what the case of his client was, it was quite unnecessary for him to say in his report Ex. R.1/59 that he suspected the disputed signatures to be in the handwriting of Laloo Chand. All that was necessary for him to say was that the disputed signatures resembled or not with one of the writings or signatures delivered to him for comparison, and to give his reasons therefor. The fact that he says at the end of his report Ex. R.1/59 that the signature of Laloo Chand in three marked B1, B2 and B3 were all written by one and the same writer, but there was not enough data to say whether they were written by the same writer who had written the signatures A1 and A2, but that there was very close similarity in the "chand" portion, shows that the expert was asked an opinion whether the disputed signatures were in the handwriting of the author of the signature Laloo Chand, marked B1, B2 and B3. This is made still more clear by the statement in the beginning of the report that the point under enquiry was whether the three signatures Laloo Chand had been written or not by the person who had written Dayachand's signature. According to the witness himself not much material was supplied to him at the time of the first report, and we are of the opinion that from the material which he had at the time of making his first report, he could hardly give a positive opinion that the disputed signatures of Sohanpal and Dayachand were not genuine, and that there was strong possibility of the two signatures being written by the author of the writings which were the admitted writings of Laloo Chand.

This expert gave his opinion in instalments. First of all, he gave his opinion Ex. R.1/59 and then Ex. R.1/60. When he gave his opinion Ex. R.1/59, he had only one specimen writing of Dayachand, that is, his signature on the Assistant Record Officer's file, Ex. R.1/2. Similarly, he had only one specimen writing of Sohanpal being his signature on the file Ex. R.1/35. In spite of this scanty material, he was able to say that the disputed signature of Dayachand was not in the handwriting of the person who had written the signature Ex. R.1/2, and the disputed signature of Sohanpal was not in the handwriting of the person who had made the signature "Sohanpal" in Ex. R.1/35. Of course, it can be said that *"sa"* and *"la"* in Ex. R.1/35 were in Hindi Devanagari character, whereas the same letters were in Marwari character on Ex. P. 1. But there was not much difference between *"pa"* and *"na"*, and if the expert wanted to give his unbiased opinion, he would, before giving his opinion, have requisitioned much more material than was placed at his disposal. A single specimen writing given in circumstances different from those prevailing at the time the disputed writing was made can hardly be sufficient for a positive opinion. It often happens that a person is very well acquainted with more than one language or script. It is likely that he might sign in any language or script he knows, where it is not of much consequence in what language or script he signs. Of course in the case of Bank cheques or Post Office Savings Bank accounts etc. a man has to sign in the same way for the fear that his cheque might be dishonoured or he might not be able to withdraw money; but while signing papers like nomination papers or such other documents in which it is not material whether the signatures are made in one language or another, or in one script or another, the writer does not take special care to sign any particular language or script, or in the manner in which he has been mostly signing. This ought to have put the expert on guard, and he should have been specially anxious to know if there were any signatures of Dayachand available in Hindi script. Brewester in his Contested Documents and Forgeries, 1932 Edition says at page 435 that—

> "The most suitable material is that written at about the same time as the contested document, on similar paper, in similar circumstances and with similar pen and ink, pencil or typewriting."

He further says at page 436 that

> "Comparison specimens should be as close as possible to the date of the document in dispute, and it is desirable that they should also be of a similar class....A single signature or a piece of writing written some ten years before or after the date of the contested document is not always likely to form a sound basis for a conclusion."

He further makes an observation, which has been approved by the witness himself in his cross-examination, that

> "As a rule, however, at least six, but if possible twelve, should be obtained, and if the specialist does not find these enough he will ask for more."

It, however, looks as if this expert did not mind giving his opinion in favour of his client even without sufficient material. He has given some technical reasons for his opinion. He has denoted the name of Dayachand in item No. 13 on Ex. P. 1 by the letter A1, the disputed signature of Dayachand by A2, and the admitted signatures of Dayachand in Ex. R.1/2 by A3. He gives the following reasons for his opinion that the signatures A1 and A2 are in the handwriting of the same person who is different from the writer of A3:—

"I. With regard to the comparison of signatures A1, and A2 with A3.

I find that signatures A1 and A2 show deliberation and unnecessary attention on the external details of writing. In A2 there is an attempt at overwriting the left portion of the letter 'Ya'. The signature A3 is comparatively far more carelessly written.

I find some fundamental differences in the individual characteristics of the signature 'A3' as compared with A1 and A2. They are:—

1. There is clear difference in the pictorial effect of A1 and A2 on the one hand as compared with A3.
2. The movement employed in A3 is more of superior finger movement. The movement in A1 and A2 is a mixture of finger and wrist movements, the curves being distinctly oval.
3. Pressure is lighter in A1 and A2 than in A3.
4. The slant in A1 and A2 is clearly about 30 degrees to the right of the normal. The slant of A3 is very close to normal.
5. Speed is faster in A3 than in A1 or A2.
6. There are also several differences in relative position of the different components of the signatures. The base of the upper curve in Da is slightly higher than the base of the basin of Ya in signature A3. Both in A1 and A2 the base of this curve is slightly lower than the base of the basin of Ya. The top of the initial stroke in Ya is clearly higher than the top of the A matra in the same letter in A3, but in the other signatures it is not so. The top of the right portion of "Cha" is higher than the top of its left portion. In A1 and A2 it is comparatively much higher than in A3. The base of the upper curve of the last "Da" is much lower than the horizontal portion of the letter Cha in A1 and A2 than in A3.
7. Relative sizing shows differences in the sizes of the upper and lower curves of the letter Da. The relation between the height and breadth of Ya is different in the letter Ya.
8. Linequality is fine in both the signatures A1 and A2 and also in A3.
9. There are clear differences in detailed designs of the individual letters.

The first Da is clearly different in its curve, and the relative sizes of the two portions of the letter, *i.e.* the upper and the lower curves. The bottom curve in A3 is not found in the Da's of A1 and A2. The base of Ya is concave from the upper side in A1 and A2, and only oblique in A3. In 'Cha' the principal difference is that the base of the basin of this letter is concave on the upper side in A1 and A2 and only oblique in A3. The dot of the anuswara on top of Cha is wedge-shaped and obliquely elongated in signature A3, but not at all so in A1 and A2. In the very first Da in Daya the terminal of the letter shows upward sweep of the pen as a result of a habit to write continuously in A3, but such a tendency is not found in A1 or A2."

We take up these reasons one by one.

Reason No. 1.—It may be said that there is difference in the pictorial effect of A1 on the one hand and A3 on the other, and A2 on the one hand and A3 on the other. It would, however, be wrong to say that there is no difference in the pictorial effect of the signatures A1 and A2. To our mind there is material difference in the pictorial effect of A1 and A2 *inter se* although there is greater difference between the pictorial effect of A3 and A1 or A3 and A2. There was bound to be a difference in the pictorial effect of A1 and A3 and also A2 and A3, because A3 is in Marwari script whereas A1 and A2 are in Devanagari script. But there should not have been any material difference in the pictorial effect of A1 and A2, if they were in the handwriting of the same person. In order, however, to support his opinion that A1 and A2 were in the handwriting of the same person, the expert has not hesitated to opine that there was clear difference in the pictorial effect of A1 and A2 on the one hand as compared with A3. This shows that he was inclined to give a particular opinion and not an unbiassed opinion.

Reason No. 2.—While saying in reason No. 2 that the movement employed in A3 is more of superior finger movement and the movement in A1 and A2 is a mixture of finger and wrist movements the curves being distinctly oval, he does not give any reasons to show why the movement in the one was of superior finger movement, and in the other a mixture of finger and wrist movements.

Reason No. 3.—Similarly in reason No. 3 he does not give any reason to show how it could be found that the pressure was lighter in A1 and A2 than in A3. It may be said that there is some difference in pressure between A2 and A3, but we do not think that the pressure in A1 and A2 is the same or that the pressure in A2 is lighter than in A3.

Reason No. 4.—We do not find that the slant in A1 and A2 is clearly about 30 degrees to the right of the normal. To us it appears to the left of the normal. There does not appear to be very much difference in the slant of A1 and A2 on the one hand and A3 on the other.

Reason No. 5.—There may be some difference in speed between A2 and A3, but there does not appear to be much difference in speed between A1 and A3. If speed were to be the determining factor, it might be said that A1 and A3 are in the handwriting of the same person, but it is not a fact. The comparative slowness of speed in A2 may very well be due to the fact that its author was signing a document which he was not accustomed to sign, and must have, therefore, been somewhat more cautious in signing it than in signing ordinary papers. Mr. Kasyap himself says in his cross-examination that there might be some slight difference between the two writings of the same man, one, when he is making in the consciousness that he is making a formal writing and the other, when he is making without such consciousness.

Reason No. 6.—Reason No. 6 also does not appear to be altogether corresponding with facts. Moreover, even if there is very slight difference between the height of different letters or their parts, it does not appear to be very material. After all every time a man signs, he does not carry a scale with him, so as to give exactly the same relative positions to different letters or their parts on different occasions. No marked differences between the relative position of different letters have been given by the witness.

Reason No. 7.—It is altogether vague. The expert has discreetly avoided saying whether it is the 'da' or 'ya' of one signatures A1, A2 or A3 about which he is speaking. From what we can see, we find that there is much difference between the relative sizing of different letters of A1 and A2.

Reason No. 8.—This reason goes in favour of the disputed signatures being genuine, as, according to the expert himself, linequality is fine in the signatures A1 and A2 as well as A3.

Reason No. 9.—There is no doubt that there are differences in detailed designs of the individual letters of A3 and A1 and A3 and A2. But this is due to the fact that A3 is in Marwari script, whereas A1 and A2 are in Devanagari script. It is significant that between A1 and A2 themselves there are clear differences in the detailed designs of the individual letters. The initial *'da'* of A1 has a very small terminal staff markedly slanting towards the left, whereas the terminal staff of *'da'* in A2 is comparatively much longer, and is more or less vertical, at any rate, not slanting at all towards the left. The height of *'ya'* in A2 is small as compared to its breadth, whereas the height of *'ya'* in A1 is greater than its

breadth. The 'cha' of A2 markedly differs from the 'cha' of A1. The horizontal initial stroke of 'cha' in A2 appears in the form of a straight line, and if slightly concave, the concavity is towards the top, whereas the horizontal initial stroke of 'cha' in A1 is slightly concave towards the bottom. At the junction of the curve with the horizontal initial stroke the angle in A2 is much smaller than in A1. The final stroke of the curve in 'cha' in A1 joins the following staff more towards the top, whereas in A1 it joins more towards the bottom. The upper part of the curve of final 'da' in A2 is much longer than the lower curve, but in A1 both of them are almost of equal size. The vertical stroke of the final 'da' in A2 is more or less vertical, whereas in A1 it appears in the form of a curve with concavity towards the right. This goes against the opinion of the expert that A1 and A2 are the products of the same hand; but the expert has not hesitated to give his opinion that the writing A1 and A2 are in the handwriting of the same person.

As regards the comparison of the disputed signature of Sohanpal and his signatures in R.1/35, which the expert has indicated by letter C1 and C2 respectively, the expert has given the following opinion:—

"The following are the differences in the two signatures reading Sonpal:—

1. The pictorial effect is clearly different.
2. Speed of C2 is faster than of C1.
3. Movement employed in C2 has more of wrist action combined with finger action than the movement in C1.
4. Pressure is lighter in C2 than C1.
5. Relative positioning differences are numerous. The base of Aa-matra in Son which has been converted into an O-matra by the addition of the upper diacritic, is much too low in C2 as compared with C1. The head of Na is much too low in C2 as compared with C1. The base of Na is clearly higher than the base of Pa in C2. The top of the left stroke of the basin of Pa is much too high as compared with the top of the right portion in C2 as compared with C1. The top of the Aa-matra in Pa is higher than the top of the main letter immediately preceding it, which is not so in the signature C1. The letter 'La' is in quite a different style and no comparison is possible from the point of view of relative positioning."

We consider the reasons one by one.

Reason No. 1.—It cannot be said that the pictorial effect of the two writings is clearly different, but there is no doubt that there is some difference between the pictorial effect of the two, as 'sa' and 'la' in C1 are in Marwari style, whereas they are in Devanagri style in C2. So far as 'na' and 'pa' are concerned, we have not been able to find out any marked difference.

Reason No. 2.—It does not appear altogether correct to say that the speed of C2 is faster than of C1. The expert has not given any reason to demonstrate why he considered the speed of C2 faster than of C1.

Reason No. 3.—The expert has given no reasons why he considers that the movement employed in C2 has more of wrist action combined with finger action than the movement in C1.

Reason No. 4.—It does not appear to be correct to say that the pressure is lighter in C2 than in C1. The expert here too has given no reasons to demonstrate that his opinion is correct in this respect.

Reason No. 5.—The relative positioning differences do not appear to be so numerous as the expert thinks. There might be some slight differences, but they might occur even in the handwriting of the same man. There is no doubt that the letters 'sa' and 'la' in C2 are of a style different from that in C1, but this is on account of the fact that they are in different scripts.

Reason No. 6.—There appears to be somewhat greater space between "na" and "pa" in C1 than in C2, but it is not such as to point to the conclusion that they are writings of two persons. As in the case of Dayachand so in the case of Sohanpal the expert considered himself competent to give a positive opinion with only one specimen writing given under different circumstances from the one in which the disputed signature was made. It ought to have struck him, if he were giving a free and independent opinion, that "na" and "pa" in the two writings were not markedly different, and it should have put him on an enquiry to get some more writings of Sohanpal in order to be able to give a satisfactory opinion.

In order to justify his opinion on the basis of one specimen signature only, he has gone to the length of deposing that forgery can be pointed out even without comparison with a single standard writing. It may be possible in the case of a traced writing or very crooked forgery but it is difficult for us to understand how it can be possible in the case of a handwriting which is free and flowing like the present disputed signatures.

This expert gave a supplementary report dated 8th February, 1953, after comparison of the disputed signatures with the specimen signatures of Dayachand Ex. R.1/4, and the specimen signature R.1/37 of Sohanpal. He also compared these writings with the specimen writing of the petitioner Laloo Chand Ex. R.1/1. He took some photographs and enlargements of the documents. At the time of this comparison, so far as Sohanpal is concerned, he also examined the signature and writing on the endorsement on the back of the summons by Sohanpal dated 7th February, 1953. He has given the following opinion:—

"(i) The signature A1 and A2 differ in pictorial effect, writing characteristics, and detailed designs of letters so fundamentally and completely, that there can be no doubt left that the signatures A1 and A2 are not written by the person who wrote A4 to A16 and A3.

(ii) The movement employed in A1 and A2 is a mixture of finger and wrist actions and that in A4 to A16 is pronouncedly more of finger movement.

(iii) Pressure is lighter in A1 and A2 than in A4 to A16.

(iv) The slant on the downstrokes in A1 and A2 is clearly nearabout thirty degrees to the right of the normal but in A4 to A16 it is very close to the normal, and there are even some backhand strokes as in Ya of Daya in A14 and A15.

(v) Speed is faster in A4 to A16 than in A1 and A2. There are several inter-letter connections in the specimens showing the dash with which they are written.

(vi) The differences in relative positions stated in my original report in connection with the comparison of A1 and A2 with A3 apply to the comparison of signatures A4 to A16 also.

On going into further minute details, I find that these differences in other characteristics also which exist between A1 and A2 on the one side when compared with A3 are persistently found when A1 and A2 are compared with A4 to A16. On the other hand A3 shows the resemblances in all the characteristics. I make the above two remarks subject to a certain amount of natural variation found between the signatures A1 and A2 and the signatures A4 to A16. I find that A1 and A2 are far removed from A3 and A4 to A16 and A3 and A4 to A16 are fundamentally similar in all the characteristics of handwriting, the detailed designs of individual letters and their pictorial effect."

These reasons are considered one by one below.

As regards Daya Chand

Reason No. 1.—It is not correct to say that the pictorial effect of the signature Dayachand on Ex. R.1/4 is very much different from the pictorial effect of the writing A2. Although there is a little vertical initial staff in some of the "da's" in Ex. R.1/4, yet in all other respects the pictorial effect of "da's" in A1 is not appreciable different from that of "da's" in Ex. R.1/4. The same thing can be said of "ya's" excepting that the difference between the height and breadth of "ya" in A2 is more than in the "ya's" of Ex. R.1/4. The effect of "cha's" in the two documents does not appear to be appreciably different, and in the case of final "da" the only thing which can be said is that the upper part of its curve is longer in A2 than in Ex R.1/4. The pictorial effect of A1 and A2 is not the same, as has been discussed above.

Reason No. 2.—Our answer to this reasoning of the expert is the same as in the case of similar reasoning in his first report Ex. R.1/59.

Reason No. 3.—We do not find that pressure in A2 is lighter than in A4 to A16. There appears to be much more difference in the pressure between A1 and A2 than between A2 and A4 to A16. The expert has given no reasons to demonstrate how the pressure is lighter in A1 and A2 than in A4 to A16.

Reason No. 4.—Our answer to this reason is also the same as our answer to a similar reason in Ex. R.1/59. We do not think that the slant in all the writings A4 to A16 is very close to the normal. There may be backhand strokes in A14 and A15, but that would not indicate that the disputed writing is not of the same man, whose writing is Ex. R.1/4.

Reason No. 5.—We are unable to find that the speed in A4 to A16 is faster than in A1 and A2. We find much more difference in speed between A1 and A2 than between A2 on the one hand and A4 to A16 on the other. We are not impressed by the reasoning of the expert that because there are some inter-letter connections in the specimens, the speed in A4 to A16 is faster than in A1 and A2.

Reason No. 6.—We do not think that there are such differences in relative positions of different letters in A2 on the one hand and A4 to A16 on the other that it might be said that the two writings are not in the handwriting of the same person.

Reason No. 7.—We are surprised to find that the expert says that differences in other characteristics also which exist between A1 and A2 on the one side when compared with A3 are persistently found when A1 and A2 are compared with A4 to A16. We are still more surprised to find in his report that A3 shows the resemblances in all the characteristics with the signatures on Ex. R.1/4. To our mind signatures on Ex. R.1/4 are just as much dissimilar with the signatures A3 as the disputed signatures are with the said signatures.

In order to show that the disputed signature as well as the name of Dayachand A1 is in the handwriting of Laloo Chand, who has given the specimen writing Ex. R.1/1, the expert says that in both the signatures A1 and A2 the initial "da" is not covered by the head-line. This is wrong. In A2, that is the disputed signature, the initial "da" is covered by the head-line. In the two names Daya Chand Nos. A17 and A18 in Ex. R.1/1 even Laloo Chand covers the initial "da" in A18 with a head-line, whereas he does not cover the initial "da" in A17. This is not such a thing as would, in our opinion, decide the question one way or the other.

Sohanpal

In the case of Sohanpal the expert has given no further reasons why he considered that C1 was not written by the writer of C2, but by the writer of C3, C4 and C5.

Evidently the expert was satisfied on making these two reports that he had given all the reasons which he could give in support of the opinion that the disputed signatures were not in the handwriting of Sohanpal and Dayachand but in the handwriting of Laloo Chand. This he has admitted in his cross-examination, where he says that he considered the two reports Exs. R.1/59 and R.1/90 to be quite exhaustive and that to his satisfaction he had given the minutest details which he considered to be important and necessary. However, when he came into the witness box, he came out with further reasons, which he did not give in either of his reports. There he has given some reasons which, according to his ownself, were noteworthy from the point of view of a non-expert. There he states:—

"1. Both the writings show very superior and graceful curves and a very evolved writer.

2 The 'O' matra of "So" has its counter part "a" in the specimen writing of Lalloo Chand. In the "O" matra of Sohan Pal in line 1 marked C5 and in the two words Sohan Pal in C3 and C4 in the bottom, this is a fine elongated diacritic with a comparatively very heavy pressure towards the left hand and almost vanishing pressure at the right hand. A similar diacritic can be seen in the words "Apne" and Jawan in the last line of the specimen writing showing the same writing personality behind all these strokes.

Just on the reverse of it, if we study the Omatra of So in the specimen writing of Sohan Pal Ex. R.1/70 the graceful curve, the elongation and the fine quality of line showing an artistic command on the pen are all conspicuous by their absence. Also the drastic change in pressure from the left to the right end found in the disputed signature and the specimen writings of Lalloo Chand are also equally non-existent in the specimen given by Sohan Pal.

Similarly in the letter "Na" of the disputed signature of Sohan Pal the initial loop is a beautiful round one and the turn on the right hand

side also is a graceful turn with the vertical stroke curving towards the left. Both these curves are absent in the specimen given by Sohan Pal.

The letter Pa in the disputed writing has a very artistic curve in its basin which is not found anywhere in his specimen C6 to C13.

The letter Sa and La in the disputed signature are written in the Marwari style and not in the Devanagari style. The same letters in his signatures on the A.R.O.'s file are written in the Devanagari style (photograph marked Ex. R./67). In the service on the summons (photograph R.1/71) there is evidence of a mental conflict where the writer first writes the letter Sa in Devnagari style in words 'samed' and 'Sonpal', and as a result of the second thought changes it to Marwari style, but unconsciously sticks to the Devanagari style to the word HOSYUN under the gripping force of habit. He wants to convert the final La in the signature Sohan Pal also in the service of summons, but my analysis of the motive is that attempt is given up because he has made the letter look too bad.

On the other hand, if we look to the disputed signature of Sohan Pal we can find the bottom portion of the curve Sa almost clearly reproduced in the bottom of curve of Aa in the word Apka, Aaj, in line 1, Aur in line 3, and Apne in line four (photograph R.1/69, the specimen writing of Lalloo Chand.)

The head of 'Na' which consists of a round finely formed loop in the contested signature is repeated in the Na in 'Chand in Laloo Chand's specimen. All these facts show that the disputed signature Sohan Pal is written by the writer who has given the specimen writing as Lalloo Chand. (Photo Ex. R.1/69). Only he has tried to change Sa and La. This Sa has proved the downfall of the effort of imitation of Sohan Pal in specimen writing R.1/70. In signature C7 the mental conflicting of writing Sa in the Devanagari style again appears and as a result of a second thought it has been converted into the Marwari style of sa. Moreover, the finer components of Sa in the disputed signature have not at all been copied. Only there is a broad change over to the Marwari style.".

It is wrong to say that the disputed writing of Sohanpal shows very superior and graceful curves in all the letters. The disputed signature of Sohanpal shows somewhat graceful curves in the initial leter *"so"* which are not to be found in the specimen signatures of Sohanpal Ex. R.1/35. But so far as other letters are concerned, we do not find any appreciable difference.

No doubt, the *O matra* in *'so'* is in two strokes, one above the head-line, and the other, *viz.*, the staff part, below the head-line, whereas this is not to be found in the specimen signatures of Sohanpal or in his signatures in Exs. R.1/4 to R.1/35. But we find from a perusal of Ex. P.1 that even in the case of "Sohanpal" written admittedly in the handwriting of Laloo Chand in item No. 9 of Ex. P.1, the first *matra* of *"so"* in Sohanpal is in one continuous stroke, as *"O" matra* of *"so"* in the specimen writing of Sohanpal, and his signatures in Exs. R.1/4 to R.1/35. If Lalloo Chand could sometimes write *"O" Matra* in two strokes and sometimes in one stroke, why should it point to any adverse inference against the genuineness of the disputed signature of Sohanpal. In the specimen writing Ex. R.1/1 of Laloo Chand, the *"O" matra* in *"Aor"* also is in one stroke. We are not impressed by the opinion of this expert that there is any difference between "na" and *"pa"* of the disputed writing and of the admitted writings.

The letters *"sa"* and *"la"* are written in Marwari style in the disputed signature, and they are in the same style in Ex. R.1/37. The expert draws some strength for his opinion from the fact that Sohanpal first wrote *"sa"* and *"la"* in Devanagari style in one or two letters of the endorsement on the back of the summons, but he tried to correct it. It may be so, but it is clear that Sohanpal can write both the scripts, and it may be his folly that he tried to correct the letters first written in Devanagari script into Marwari script. We find from the statement of this expert that he has been very anxious to show that the disputed signature was in the handwriting of Laloo Chand. The reasons which he has given are not very impressive, and they have been discussed in the earlier part of the judgment. This shows the biassed character of this witness, and we cannot, therefore, confidently rely upon his statement. He has himself admitted that there may be some slight difference between the two genuine writings of the same man written under different circumstances. He has also admitted that there may be some difference in the case of consciousness of formal nature of writing and

in the case where there is no such consciousness. He has further admitted that there may be some difference between the specimen signature, taken in the presence of the court with the consciousness that they are being obtained as specimen signatures, and ordinary signatures. The disputed signature cannot, therefore, be condemned as non-genuine or forged, simply on account of the differences pointed out by this expert.

Coming to the evidence of Fateh Singh, he is only a layman, and evidently when the "*sa*" and "*la*" in the receipts Ex. R.1/4 to R.1/34 produced by him were in Devnagari style, and the "*sa*" and "*la*" in the disputed signature were in the Marwari style, his opinion that the disputed signature was not in the handwriting of Sohanpal has not much value. This is the entire evidence produced by the contesting respondent.

Coming to the rebutting evidence, there is the direct evidence of the petitioner Laloo Chand himself and that of Dayachand and Sohanpal, which shows that it was Sohanpal, who actually signed as proposer and Dayachand, who actually signed as seconder. This evidence is corroborated by the evidence of two legal practitioners, Shri Prakash Chandra Kala and Kapoor Chandra Patni. They have all sworn that Sohanpal and Dayachand signed the nomination paper Ex. P1 as proposer and seconder respectively. They were cross-examined at length, but nothing could be elicited in cross-examination to show that they were telling a lie. No doubt the petitioner is interested in the case, and Sohanpal and Dayachand are related to the petitioner. But this fact alone would not make their evidence unbelievable, especially when it is corroborated by the evidence of two independent witnesses M/s. Prakash Chandra and Kapoor Chandra. It is seldom that lawyers take upon themselves the heavy risk of being found guilty of perjury. These two lawyers were not committed in any way, and if it were a fact that Sohanpal and Dayachand had not signed the nomination paper Ex. P1, their answers would certainly have been more hesitating than they have been. It has not been shown that they are so much interested in the petitioner that for his sake they would perjure. Mr. Kapoor Chand Patni resides in the Boarding House where the document is said to have been attested, and Prakash Chandra Kala has also given valid reasons why he was present at the time the nomination paper was attested. One strong fact which goes against forgery is that both the disputed signatures have been freely and unhesitatingly made. This is one of the reasons given by Mr. Krishan Behari Lal, expert, produced by the petitioner for the opinion that the disputed signatures did not appear to be forgery. Osborn in his Questioned Documents, Second Edition, says at pages 273 and 274:—

> "Realization of the fact that forgery is a criminal act, the fear of discovery, and the painful anxiety to do the work well, all combine to bring about a mental and muscular condition in the writer that make it very difficult, if not altogether impossible, to do the work in a skilful manner. An actual criminal forgery undoubtedly is a poorer piece of work than could be executed by the same writer merely as an exhibition of skill.
>
> This intense fixing of the attention on the matter and the process of writing makes it extremely difficult to write even one's own hand in a free and natural manner, and under these self-conscious conditions to be required to imitate successfully the writing of another is a task of very great difficulty.
>
> Forgeries nearly always show plainly the natural results of the strained conditions described; too much attention is given to unimportant details and a slow, hesitating, and unnatural appearance is shown in the writing even when it is a quite accurate copy of the main features of the genuine writing imitated. Usually it is not even a good imitation of form characteristics and thus fails in the elementary part of the process. The fundamental and usual defect in a forgery is, however, not divergence in form, but a quality of line. Close scrutiny of line quality alone often furnishes the basis for grave suspicion that a signature is not genuine."

If the petitioner Laloo Chand or somebody else had forged the signatures of Dayachand and Sohanpal, the writing could not be expected to have been so free and fluent. Moreover, if any forgery was going to be committed, the forger would have taken utmost pains to make the disputed signatures resemble the genuine signatures of Sohanpal and Dayachand. The fact that no hesitation or undue attention was shown while making the signatures of Sohanpal and Dayachand in Ex. P1, goes against their having been forged. Mr. Krishan Behari Lal appeared to us to be a witness who was not much biassed in favour of the party calling him. He has given similarities as well as dissimilarities between the disputed

signatures on the one hand and admitted signatures on the other, and after a consideration of both the similarities and dissimilarities, he has come to the conclusion that the disputed signatures were in the handwriting of those very persons who had given the specimen signatures of Dayachand and Sohanpal before the Tribunal. He has given certain reasons to show that the disputed signatures appeared to be in the handwriting of the same person who had given the specimen signatures Exs. R.1/4 to R.1/37.

In the case of Sohan Pal, Shri Krishan Behari Lal has given the following reasons:—

"(Q denote questioned signature and S specimen signatures).

I now consider Q and S, from the standpoint of some very inconspicuous and subconscious 'formative' habits and mannerisms. Some very glaring of them are:—

1. Observe the pencil lines No. 1 made out at the base of these signatures. It can be so readily ascertained now that the signatures are gradually and consistently ascending as proceeding and progressing towards the right.

2. Then observe that at the base the 1st and the 4th letters, *viz.* 'So and L— ल go a little below than the intermediate letters, i.e., letters 'N and PA— '

"SO-सो"

3. Now observe the pencil lines No. 2 made out along the two arcs of this letter denoting their exis. In all, this line is tilted so consistently towards the left.

4. Now observe that both the junction-ovals of these arcs, *viz.*, points 'a and b' terminate more or less in the same line. with the tendency of the lower junction, *i.e.*, point 'b' receded a little towards the right of the above junction, *i.e.*, point 'a'.

5. Of these two arcs, the lower one is a little wider than the upper.

6. These junction-ovals are long oblongs and rather crisp in expansion.

7. As in Q so also in several S [*i.e.* sig Nos. (1), (2), (3), (4) and (6)], the 1st staff of the letter terminates a little above of the lower junction-oval, at the base.

Deviations.—Unlike 'S' in 'Q' the top-head stroke matra remains detached from the 2nd staff. And also unlike 'S' in 'Q' the initial arcs are continued with the following staff like an arc *though the angle at which they contact is of 60 at an average.*

"N-न"

8. The very personal and individualising feature about this letter is its initial knob, which is persistently directed diagonally down towards the right in the first instance. Arrows 3.

9. This initial knob is triangular in formation and tilted towards the left.

10. The horizontal after the said knob is a long ascending stroke towards the right, contacting the staff at its initial.

11. The said horizontal contacts the staff rt. angularly in Q as also in several 'S', *viz.*, [S-(1), (4), (7), (8).]

12. The knob and the staff remain quite wide apart from each other.

13. As in Q so also in several 'S' this letter at the vertex remains a little below of the preceding 'SO '.

14. As in Q so also in several 'S', the horizontal of this letter goes quite close below the top-head line, expanding with it toward. the left below.

15. As in 'Q' so also habitually in 'S' the staff terminates below the initial knob at the base.

"PA-पा"

16. The arc of this letter is vertical in expansion and takes a protuberated turn at the left base-turn.

17. The said arc contacts the initial of the following staff or retracted upto it.

18. The said arc contacts the staff at an average angle of 30°.

19. As in 'Q' so also in several 'S' the terminal of the said arc goes a little above of its preceding initial.

20. The staff goes only a little below at the base of the preceding arc.

21. The 2nd staff terminates above the 1st at the base.

"L-ৰ"

22. As in 'Q' so also in several 'S' the two arcs are accomplished like the English letter "S", laid out horizontally.

23. The 1st arc is a long oblong arc, deep horizontally and ascended a little towards the right at the terminal.

24. The 1st arc is initiated from a little less than half the horizontal below from the right. Observe pencil lines No. 4 for this.

25. The 2nd arc is much less narrow than the 1st, and as in 'Q' so also in several 'S' it is terminated like a diagonal stroke towards the left base. Arrows 5.

26. The terminal of this 2nd arc remains conspicuously away towards the right of the initial of the 1st arc.

27. The vertical tick that is added afterwards falls upon and contacts the curve of the 2nd arc. Arrows 6.

28. *Pen-position while writing.*—Both in 'Q and S' the concavity of the nibs is held towards the base. The study of a vertical and then its corresponding horizontal stroke, or the position of the nibs at the terminals, will readily reveal this fact.

29. *Speed and movement in writing.*—In comparison to 'S' 'Q' has been accomplished more fluently and with a faster speed. This is due to the different movements employed, for 'Q' has been executed with fore-arm movement, thereby denoting that the writing position here was more comfortable than what is to be noted with 'S' where it is 'wrist' movement, and it is on this account that the various curves here are not so fine and quick as with 'Q' usually."

First of all the expert says that *"so"* and *"la"* in the signatures of Sohanpal go a little below the intermediate letters, *i.e.*, *"na"* and *"pa"*. On a perusal of the disputed signatures as well as the specimen writing Ex. R.1/37, we find it to be correct.

We also find it correct that the points 'a and b', the junction-ovals of the arcs, terminate more or less in the same line, with the tendency of the lower junction *i.e.*, point 'b' receded a little towards the right of the above junction, *i.e.*, point 'a' in the enlarged photograph marked (S).

Of the two arcs of *'sa'* the lower one is a little wider than the upper in the disputed as well as the specimen writing. This too is found to be correct, in the case of the disputed signature and in the case of most of the signatures in R.1/37.

It is also true that in the disputed signature as well in several signatures, i.e., (1), (2), (3), (4) and (6) of Ex. R.1/37, the first oval of the letter terminates a little above the lower junction oval at the base. He has not hesitated to give his opinion that the top-head stroke of the *matra* is detached from the second staff in the disputed signature, whereas it is not so in the specimen signatures.

As regards *"na"* he says that in all the *"na's"* whether it be of disputed signature or in the specimen signature, the personal and individualising feature is its initial knob, which is persistently directed diagonally down towards the right in the first instance. It is also true that the horizontal after the knob is a long ascending stroke towards the right contacting the staff at its initial. It is also true that the horizontal contacts the staff rectangularly in the disputed signature as also in several specimen signatures, *e.g.*, 1, 4, 7 and 8, on Ex. R.1/37. He is also right that the knob and the staff of *"na"* remain Quite wide apart from each other, and that this letter at the vertex remains a little below the preceding letter *"so"*, in the disputed signature as well as in some of the specimen signatures. It is also true that the horizontal of *"na"* goes quite close below the top-head line expanding with it towards the left below. It is also true that the staff of *"na"* terminates below the initial knob at the base, in both the documents given to him for comparison.

So far as *"pa"* is concerned, the expert is correct when he says that the arc of this letter is vertical in expansion and takes a protuberated turn at the left base-turn, that the said arc contacts the initial of the following staff, that the terminal of the said arc goes a little above its preceding initial, that the staff goes only a little below at the base of the preceding arc, and that the second staff terminates above the first at the base, in both the documents given to him for comparison.

As regards *"la"* also, he has correctly said that the two arcs are accomplished like the English letter "S" laid out horizontally, that the first arc is a long oblong arc, deep horizontally and ascended a little towards the right at the terminal, that the first arc is initiated from a little less than half the horizontal below the right, that the second arc is much less narrow than the first, and as in the disputed signature so also in several specimen signatures it is terminated like a diagonal stroke towards the left base, that the terminal of the second arc remains conspicuously away towards the right of the initial of the first arc, and that the vertical tick that is added afterwards falls upon and contacts the curve of the second arc.

He has given several reasons about the genuineness of the disputed signatures of Daya Chand. He says that the upper arc of *"da"* is an oblong formation, tilted diagonally towards the right, and having a converging circular turn at the base-left. The junction is formed by taking a vertical retrace at the terminal of the said upper arc. The terminal of the said arc takes place towards the left of its initial in the disputed signature, and most of the letters in the specimen signatures on R.1/37 also have this consistency with it. The lower final is a long straight stroke, descended towards the right, in the disputed signature. In the specimen signature also the type of the stroke is the same, though many of them are hooked a little at the terminal. It is also true that the lower final stroke of *"da"* is conspicuously longer than the gap of the upper arc above it.

About "ya" in Dayachand, he says that this letter is the vertical concavity on the initial stroke (*i.e.*, left) of its arc, that this concavity takes place closer to the top-head line than the base of the said arc, and that at the vertex, the initial of the said arc has the tendency to go a little above of its terminal. It is also true that at the base the staff and the preceding arc terminate more or less in the same line. It is also correct that as in the disputed signature so also in several specimen signatures the second staff terminates conspicuously above the first at the base.

About *"cha"*, the expert says that the initial is a long horizontal, ascending as proceeding towards the right; that it travels quite close below the top-head line; as in the questioned signature so on several specimen signatures marked by arrows on Ex. P/4 (photograph Ex. P8 marked S2 by the Expert) the following arc is brought down after a short back retrace from the terminal of the said horizontal; that the arc takes a crisp circular turn at the left base; that the said arc is contacted to the staff at a little below its initial but retraced upto it; that the arc is contacted to the staff at an average angle of 50°; that the staff at the vertex goes only a little above of the preceding horizontal; that the dot over this letter has a very persistent location in being placed over the staff, but with a tendency to be a little towards its left; and that it is not a mere 'put' of the nibs, but something like a short arc tick-stroke directed towards the right.

On a very careful perusal of the disputed signature as well as their enlarged and ordinary photographs and the specimen signatures and their photographs of both sizes, we find that the characteristics brought out by the expert in respect of this letter in both the documents are similar. Of course it cannot be said whether the terminal of the arc of *'eha'* makes an angle of 50° where it touches the following staff, but the angles whatever their size are very nearly equal.

This expert says in the end that in comparison to his specimen signature (S) the questioned signature of Sohanpal (Q) has been accomplished more fluently and with a faster speed, and that this is due to the different movements employed, for 'Q' has been executed with fore-arm movement thereby denoting that the writing position here was more comfortable than what is to be noted with 'S' where it is 'wrist' movement, and it is on this account that the various curves here are not so fine and quick as with 'Q' usually.

About Dayachand's signatures he says, "Both (*viz.*, questioned and specimen signatures) write with more or less the same medium speed, i.e., neither very fast nor quite slow. Both execute with 'wrist' movement, and it is because of this that the turns are quite tapering and rather slow, and not very circular and flowing".

On a careful comparison of various documents and their photographs we feel that the opinion given by this expert is preferable to that of Mr. Kashyap. In any case, it cannot be said that the reasons given by Mr. Kashyap are more in accord with facts and are more convincing than the reasons given by Mr. Krishna Beharilal.

Mr. C. L. Agrawal argued that Mr. Krishna Beharilal had himself admitted that the name of Dayachand in Ex. P1 and the signature of Dayachand in the same document appeared to be in the handwriting of the same person. This witness did not compare these two signatures by scientific methods, and in cross-examination he said that the name of Dayachand in item (9) of Ex. P1 and his contested signature apparently seemed to be written by one and the same person. This was, however an opinion without any proper examination of the two signatures, and cannot have greater weight than the opinion of a layman. However, we compared the two writings very carefully, and to our mind they do not appear to be in the handwriting of the same person for the reasons which we have given in the earlier part of this judgment. Similarly no adverse inference can be drawn against the petitioner by the admission of this witness in cross-examination that the disputed writing appeared to be in the handwriting of a person different from that of the Marwari writing in Ex. R.1/2. The two scripts are entirely different, and it is difficult to say for any witness without any proper scientific comparison that they are or are not in the handwriting of the same person.

Another argument was raised by learned counsel for the respondent No. 1 that Dayachand had himself admitted, when the disputed signature was shown to him under a pigeon hole, that it was not in his handwriting. Dayachand appeared before us, and we found him to be a man not bestowed with good eye-sight. It was very difficult for him to say from a pigeon hole whether the writing under it was in his handwriting or not. He consistently maintained even under the stress of fisy cross-examination that he made his signature on the nomination paper Ex. P1. Sohanpal, even while looking through the pigeon hole, similar to that used in the case of Dayachand, stated that the signature was his. However, we are not laying much importance to this test, as we do not think that it can lead to any safe conclusion.

A particular feature of this case is that both the proposer and the seconder, whose signatures are said to have been forged, appeared before us as witnesses and boldly stated that they had signed the nomination paper themselves. Even if they are related in some way or other to the petitioner, it can hardly be expected that a man would put himself into trouble for the sake of another man, even though he were his relation The easiest thing for these particular witnesses was to keep away from court, but they came and submitted themselves for examination before it. They were cross-examined at length, and still they maintained that the signatures were theirs. Not a single question was put to them during cross-examination as to why they had signed partly or wholly in a style in which they did not sign previous to their signing the nomination paper. It appears that both of them are conversant with Marwari as well as Hindi scripts, as appears from the various documents in this case. They might have signed on some occasions in Hindi script, and on other occasions in Marwari script. If the contesting respondent wanted to show that they had never signed in the script in which they signed the nomination paper, previous to the said occasion, it was for him to ask them in their cross-examination whether they had ever signed in the script in which they had signed the nomination paper, and if they had stated that they had done so, they could be asked to produce those signatures or writings. But the contesting respondent did not want to avail of this opportunity when the two witnesses were in the witness box, and it was not quite reasonable to argue, after they had gone, that their signatures on the nomination paper were different from the signatures given by them on previous occasions. In none of the cases cited before us, the person, whose writing was said to be forged, came before the court, and swore that the writing was his. In the particular circumstances of a case, therefore, expert evidence might have been acted upon; but in the present case where there is so much direct evidence, and where the persons whose signatures are said to have been forged have come before the court and said that the signatures were theirs, and in spite of terrific cross-examination they stood the test well, we are unable to hold, only on the evidence of Mr. Kashyap, especially when it is contradicted by the evidence of another expert, Mr. Krishna Behari Lal, that the contesting respondent has succeeded in proving that the disputed signatures were not genuine. On a very careful consideration of the entire evidence and circumstances in the present case, we can come to no other conclusion than that the contesting respondent has failed to prove that the signatures of Sohanpal and Dayachand on the nomination paper Ex. P1 were not genuine.

The result of our findings is that the petition should be allowed and election of the respondent No. 1, Kr. Tej Singh, be declared void.

(Sd.) KUMAR K. SHARMA, *Chairman.*

(Sd.) A. N. KAUL, *Member.*

(PER SHRI SHOME, MEMBER)

In my view, this election petition ought to fail on Issue No. 7. The point arises in this way. Section 40 of the Act lays down that every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section (1) of section 33.....appoint in writing either himself or some one other person to be his election agent. Mr. C. L. Agrawal for the contesting respondent argues that in terms of the wordings of the section, even if the candidate himself is his election agent, his appointment as such election agent must be in writing. In this case, there is no such writing by the petitioner appointing himself as his own election agent. Mr. B. L. Loharia for the petitioner admitted in his statement under Order X, Rule 1, of the Code of Civil Procedure that his client did not appoint himself as his own election agent by any separate writing apart from the declaration of the appointment of election agent, which forms part of the nomination paper, and he contended that no further appointment in writing was necessary. Mr. Agrawal, on the other hand, contends that the declaration of the appointment under clause (3) of section 33 is quite a separate thing. Declaration is an acknowledgment of an appointment and it cannot take the place of the appointment itself. There must first be an appointment in writing under section 40, and then can a declaration be made of that appointment under clause (3) of section 33. If the appointment is not made previously to the declaration—and such appointment can, under section 40, be made only in writing—then the declaration becomes false and as such the nomination paper would be invalid because of the false declaration.

I think, there is a good deal of force in Mr. Agrawal's contention. The Act contemplates two things to be done at two stages. First, under section 40, the appointment of the election agent is to be made in writing, whether such agent be the candidate himself or some other person. Then it is to be declared in the nomination paper that such an appointment has been made. The appointment is not a mere mental process, but must be translated into a definite act, *viz.*, a writing making the appointment. That writing of appointment again must precede in point of time the making of the declaration in the nomination paper. So, unless an appointment is made previously, the declaration under clause (3) of section 33 of the Act cannot be made and if made, it would be incorrect and false. It is admitted by the learned counsel for the petitioner that apart from the declaration, there is no other appointment in writing. His contention is that the declaration is the writing and that is sufficient for the purpose of appointment also. Now, if the declaration in the nomination paper under section 33(3) is the only writing regarding the appointment of his election agent by the petitioner, the question would arise, whether there has at all been an appointment made thereby. The terms of the declaration are—

> "I hereby declare that I *have appointed*.....or myself to be (or as) my election agent."

Clause (3) of section 33, which provides for this declaration states that every nomination paper delivery under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate *has appointed* as his election agent either himself or another person etc. etc. So, this declaration is meant to be an assertion or affirmation or acknowledgment of an appointment made prior to the making of the declaration. The declaration by its terms is not and cannot be the writing of appointment, contemplated under section 40 of the Act. It is a declaration of a thing having been done and not of one being done along with it. If it were so, then the form of declaration would have been—"I hereby declare that I do appoint etc. etc.", and the language of clause (3) of section 33 would have been— ".....a declaration in writing subscribed by the candidate that the candidate thereby is appointing as his election agent etc. etc.", or something like that. On the language of section 33(3) and the form of declaration as it stands, it would appear that unless and until there is an appointment under section 40 in writing, there cannot be a declaration under section 33(3). The declaration under section 33(3), therefore, cannot, in my view, serve the purpose of an appointment under section 40. As such, it must be held that no valid appointment of an election agent on behalf of the petitioner has been made and the declaration under section 33(3) being, therefore, incorrect and false, the nomination paper of the petitioner is also invalid.

Reference was made to the case of Hazi Nazimuddin and Sivaprased Sarma *versus* Dandiram Datta and others, decided by the Assam Election Tribunal on the 30th October, 1952, but it does not appear that this point was raised and considered in that case in the form and manner in which it has been raised in the present case before us. The effective decision in that case was that when a candidate appoints himself as his election agent, it was not necessary for the candidate to execute or file Form 5-A. This is a proposition with which no one will disagree, but this does not touch the point now raised in this issue before us.

As a result of my finding on this issue, the election petition would fail, and the other issues need not be gone into. But the question raised in this issue was previously raised in another election petition (Election Petition No. 105 of 1952—Din Singh & others *V.* Kapildeo and others, decided on the 9th May, 1953) before us, though under somewhat different circumstances. The point of law now raised in this issue was considered by us in the said case. In our decision in that case, I expressed that view hereinbefore stated, but my learned brothers, Hon'ble Mr. Justice Sharma and Mr. A. N. Kaul, expressed the contrary view, and they held that the statement in the declaration in the nomination paper under section 33(3) was sufficient for the purpose of the appointment of an election agent in cases where the candidate himself is his own election agent, and that no separate writing under section 40 was necessary. The view of the Tribunal, therefore, was the view of the majority, as expressed by my learned brothers, who stick to their view in this case also. So under the circumstances, their view will prevail, and the eventual answer to the issue will be in the negative.

In consequence thereof, the other issues will also have to be gone into.

Next comes issue No. 3, because if it is decided in the affirmative, then also the election petition will fail.

ISSUE No. 3.—This issue, in which the contesting respondent questions the genuineness of the signatures of the proposer and seconder of the petitioner in his nomination paper, is based on the allegation made by the contesting respondent in para. 14 of the Additional Pleas in his written statement. Therein he states that the said signatures are not genuine. The statement of fact in his written statement has been verified by the contesting respondent as true to his knowledge and belief. But the facts on which such knowledge or belief is based have not been disclosed. The petitioner Laloo Chand has examined himself and has stated that the signatures are genuine and he has also examined two more witnesses, P.W. 2, Prakash Chand Kala, and P.W. 3, Kapoor Chand Patni, who have stated that the proposer, Sohanpal, and seconder, Dayachand, had signed the nomination paper in their presence at the Jain Boarding House at Jaipur on the morning of the 26th November, 1951. The proposer and seconder, Sohanpal and Dayachand, were summoned as Court witnesses, and they came and acknowledged and admitted their signatures in the nomination paper. As against this direct evidence for the petitioner, the contesting respondent has adduced no direct evidence on his behalf, neither has he examined himself to disclose the nature of the facts on which his alleged knowledge of the signatures being not genuine was based. The only evidence that he has produced on the point is the opinion and evidence of a handwriting expert. But the opinion of the expert was obtained very much long after the filing of the written statement, and the respondent's knowledge of the signatures being not genuine, if real, must have been based on some other facts, which he has withheld from the Court. If he knew at the time of the filing of the written statement that the signatures were forged, that knowledge must have been based on some facts or information which he had got previously thereto. He has not disclosed those facts or information, which he might have had, and as such he has withheld some evidence from the Court, for which the presumption must go against him. If on the other hand, he had no such information and took this plea as one of the omnibus denials, with which we are so familiar in Indian Pleadings, then his verification of the statement as being true to his knowledge or belief is wrong and untrue. In the latter event, it seems to me to be very doubtful whether, in view of the facts stated above, this plea of the contesting respondent can or should at all be entertained. The plea is based upon a false verification, or is a mere speculative one, and I have grave doubts in my mind as to whether, in circumstances like these, a plea like this can legally be pressed.

However, the parties have adduced evidence on the issue, and the proposer and seconder have also come to Court to depose, and we may as well go into the merits of the plea.

The direct evidence, adduced by the petitioner on this issue to prove that the signatures of the proposer and seconder in the nomination paper were genuine, has not been shaken in any material particulars. The proposer, Sohanpal, and seconder, Dayachand, came and testified to the genuineness of their signatures. The petitioner examined himself and stated that the proposer and seconder signed their names on the nomination paper at Jaipur on the morning of the 26th November, 1951, at the Jain Boarding House. Two other witnesses, Prakash Chand Kala and Kapoor Chand Patni, (P.W.'s 2 and 3) also testified that Sohanpal and Dayachand signed the nomination paper at the said place on the said date and time in their presence. All these witnesses were put to a very long and searching cross-examination and nothing has been elicited to raise any doubts about their veracity. Testimony of Sohanpal and Dayachand was sought to be attacked on the ground that they were relatives of the petitioner, the latter being his own maternal uncle and the former also a relation. But in elections, it is to relatives and friends that candidates go for support and for being proposed or seconded. The argument cuts both ways. The mere fact of their being relations would not detract from the value of their evidence, unless it is otherwise shown to be unworthy of belief and reliance. Sohanpal's testimony is attacked on another ground, *viz.*, that his daughter's marriage was fixed for the 1st December, 1951, and he was not expected to leave his house on the eve of that ceremony. That is mere speculation. Sohanpal said that he was asked by the petitioner to come to Jaipur for this very purpose of proposing, and he also took this opportunity to make some marketing for the marriage ceremony. The explanation seems to be plausible. At any rate, if Sohanpal did not leave his native home on that occasion, some evidence might have and ought to have been available to prove that he was present on that very day (26th November) at his home, and did not or could not come to Jaipur, but the respondent has not made any attempt to produce any such evidence. The other two witnesses, who are lawyers, and perfectly independent persons, have been attacked as chance witnesses, but they have given good and valid reasons, why they were at the place at that time. One of them (P.W. 3, Kapoor Chand Patni) was then the Accounts-in-Charge and Warden of the Boarding House, and the other (P.W. 2, Prakash Chand Kala) also came in connection with the election of another candidate. In spite of a searching cross-examination, the learned counsel for the respondent has not been able to elicit one little circumstance why all or any of these witnesses are not to be relied on. From their demeanour and their straightforward statements, I have no reason to suspect that they have any reason to come and depose falsely in a matter like this, specially the two lawyer witnesses, and take such grave risks upon themselves, by wilful perjury.

Not having been able to shake the direct evidence in any way, the respondent has, as if, as a last resort, taken recourse to the opinion and evidence of a Handwriting Expert. The opinion and evidence of this Handwriting Expert Mr. Ugrasen Kashyap (R.1/W.3) is that the signatures of Sohanpal and Dayachand in the nomination paper are not genuine. He goes further than that and in a supplementary report says that the said two signatures were written on the nomination paper by the petitioner Laloo Chand. For the purpose of a decision on this issue in favour of the respondent, it is sufficient to show that the signatures are not those of the alleged writers, Sohan Pal and Daya Chand, and it is not at all necessary to go into the question as to who wrote them. But the respondent has taken a good deal of pains, time, trouble and expenses to prove that it was the petitioner who forged the signatures. It is not necessary for the Tribunal to find out who forged the signatures, even if they are found to be really forged. But perhaps the personal element here got the better of the legal issue and personal ill-feelings, which are the abiding legacies of election contests, in the present stage of the political evolution of our country, have played a great part in the case.

Be that as it may, the question now is whether the direct evidence in support of the genuineness of the signatures, including the testimony of the writers themselves should be discarded in favour of the opinion and evidence of the said Handwriting Expert. That evidence and opinion is uncorroborated by any other evidence on behalf of the respondent. The respondent examined one other witness, Fateh Singh (R. 1/W. 1), but he was practically a formal witness, who produced certain papers and records, which contained Sohanpal's and Dayachand's signatures. He, of course, said, looking into the signature of Sohanpal in the nomination paper, that it was not Sohanpal's signature, but coming from a layman, his opinion is not of any weight. So that, if we are to accept the evidence of the Handwriting Expert produced by the respondent, we have to do so, on discarding the direct evidence in its entirety and rely on the expert evidence without any corroboration.

The question is, can we do so. A very large number of cases of the different High Courts of India and of the Privy Council on this point have been cited before us by the parties. It is not possible to refer to all of them. But the trend of the decisions seem to be that direct evidence should ordinarily be preferred to expert opinion, and that expert opinion should not be accepted without substantial corroboration [1]. Expert evidence, however, is to be read as any other evidence in the case, and the Court must satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy itself as to the value of other evidence [2], and in assessing the value of such evidence the Court is to give weight to the testimony and opinion of the expert, just in proportion as it thinks that the reasons he gives for his opinion are good reasons or bad reasons [3]. It has further been held that where an expert knew beforehand what the party examining him wanted to prove, that circumstance would detract to some extent from the weight to be attached to the expert's testimony [4], and that it would be going too far to say that an expert, who has generally a certain amount of unconscious bias in favour of the party examining him, is more reliable than the witnesses of fact [5].

Keeping the above principles in mind, we have now to test the value of the Handwriting Expert's opinion. But before doing so, it has got to be stated that the petitioner also examined a Handwriting Expert (Krishna Behari Lal, P.W. 4) on his behalf by way of rebuttal of the respondent's evidence. This latter expert gave the opinion that the signatures were genuine. In such cases, the trend of decisions is that when handwriting experts have been produced by both the parties, their evidence is of little help, if each of them supports the case of the party who called him, and each gives technical reasons in support of his opinion[6], and the reasonable course for the Court to adopt is to accept that opinion which is not in conflict with the direct evidence[7].

The petitioner Laloo Chand stated in his evidence that all the entries in the nomination paper were made by him, except the entries in items Nos. 12 and 16, which were the signatures of the proposer and seconder respectively. The respondent has tried to impute the authorship of the signatures in the said items Nos. 12 and 16 on the petitioner and for this purpose the respondent got the disputed two signatures compared by his expert with (1) the writing by Laloo Chand of the names of Sohanpal and Dayachand in entries of items Nos. 9 and 13 of the nomination paper, (2) some admitted signatures, about 32 in number, of Sohanpal in certain official papers (Exs. R.1/4 to R.1/35), produced by his witness Fateh Singh (R.1/W.1), (3) one admitted signature of Dayachand in an official paper so produced by the said witness Fateh Singh, (4) some writing written by the petitioner Laloo Chand in court at the dictation of the learned counsel for the respondent, (5) some signatures taken in court from Sohanpal and Dayachand, and (6) signature of Sohanpal in a summons in this case. Enlarged photographs of the disputed two signatures, of the writing by Laloo Chand, petitioner, of the names of Sohanpal and Dayachand in the entries in items Nos. 9 and 13 of the nomination paper, of the writing of Laloo Chand taken in court and of the signatures of Sohanpal and Dayachand taken in court, as also those of the admitted signature of Dayachand and two out of the admitted signatures of Sohanpal in the official records, have been produced and proved in the case. The learned Chairman of the Tribunal, Hon'ble Mr. Justice Sharma, and Member, Shri A. N. Kaul, have exhaustively dealt with the reasons adduced by the two experts in support of their respective opinions in great detail, and so I need not traverse the whole ground over again. I generally agree with them, but I desire to make some observations on the general and broad aspect of the case, as it emerges from a comparison of these writings and signatures *inter se*.

The first thing that strikes one on looking into the disputed signatures and their enlargements is that they are not simulated writings; there is no tremor or hesitation in the writings, and there does not seem to be any attempt to copy from some other model writing. The writing is firm, bold, strong and written in one continuous flow, and is not written in a constrained, slow and unnatural manner. In a forged signature, one would expect some evidence or indication of timid hesitation, however slight.

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(1) 14 I.C. 418, A.I.R. 1952 Calcutta 422.
(2) I.L.R. 60 Bombay 187, A.I.R. 1945 Sind; A.I.R. 1951 Privy Council 168.
(3) Osborn on "The Problem of Proof", p. 315.
4 14 I.C. 418.
5 A.I.R. 1951 Pepsu 101.
6 A.I.R. 1939 Oudh 213; A.I.R. 1933 Lah. 835.
7 A.I.R. 1926 Lah. 318.

Next, we see that in this case the alleged writers come and acknowledge their signatures, whereas in all the reported cases we generally find that the alleged writers deny their alleged signatures or that the alleged writers being dead cannot acknowledge or deny them. Independent witnesses, whose veracity cannot be challenged, have also come to support them. So we start with a heavy stock in favour of the genuineness of the signatures.

One of the tests as to the genuineness of a writing is its general characteristics. In the present case, though a sample of writing was taken in Court from the petitioner Laloo Chand, which might give one some idea about the general characteristics of his writing, no such writings have been taken from Sohanpal and Dayachand in order to test the general characteristics of their writings. All that we have from them is their signatures—consisting of 4 letters each, with their *matras*.. Four letters only are hardly sufficient for a proper test as to the general characteristics of the writings of these two pesons. Sohanpal writes his name as *So-n-pa-l*, and Dayachand as *Da-ya-cha-nd*. Admitted signatures and the signatures taken in court also contain only these four letters each. The admitted signature of Dayachand in the official record is again written in what has been called Marwari style, while the disputed signature as also most of the signatures taken from him in court are written in Shastri or Devanagri style. The scripts of the two styles are in some cases quite different and offer no basis for a comparison. All the old signatures of Sohanpal are also likewise in the Devanagari style, whereas his disputed signature and his signatures taken in court and on the summons are in Marwari style. Comparing Dayachand's disputed signature with his signatures taken in court, it would appear that there is a good deal of resemblance in the middle two letters—*ya* and *cha*—in the two signatures. The *da* in the two signatures, however, is quite different, but then, the Marwari style *da* and Devanagari *da* are quite different in script, and have no points of similarity amongst them. If Dayachand chose to sign his name in the nomination paper—as the independent eye-witnesses say that he did—in one style, there is no reason to damn it as forgery because only one letter in the signature did not agree with the said letter in his other signature, written in a different style. His *da*, it may be stated, in his signatures taken in court in Devanagari style, is somewhat dissimilar to the *da* in the disputed signature.. What would be the effect of that small dissimilarity will be considered hereafter.

Regarding Sohanpal's signatures also, the middle two letters *na* and *pa* are almost similar in the disputed and the admitted signatures as also in the signatures taken in court. The respondent's Handwriting Expert has pointed out some dissimilarities, as to the bent, curve, stroke and other things, but even in the admitted signatures in the official record, such dissimilarities and slight variations have occurred but the general way of writing the two letters is the same in all these cases. The last letter *la* also in the disputed signature agrees roughly with the *la* of his signatures taken in court, but not with some of the *la*'s in the signatures in the official records. All the *la*'s in these official records are also not quite uniform. His signatures in the official record, numbering over 30, also show that he has not got a set hand and is evidently a man who does not write uniformly in all occasions. There are slight variations and discripancies in almost all the letters in one or other of those signatures. On the standard adopted by the Handwriting Expert, if strictly applied, some of these very admitted signatures may as well be classed as being not genuine, because of these few but varied dissimilarities.

Then with regard to the letter *so* in the signature *So-n-pa-l*. In all the old admitted signatures in official records, Sohanpal writes the letter *sa* in what has been called the Devanagari style. But in the disputed signature as well as in the signatures taken in court, as also his signature on the summons for appearance in this case, the letter *sa* is written in the Marwari style. The two styles are quite different in script and this difference in the script would not by itself make the writing spurious and forged. In the summons in this case he also signs his name with a *sa* in Marwari style, and this *sa* resembles the *sa* in the disputed signature. But the *matra O* in the letter *So* of Sohanpal in the disputed signatures shows some peculiarity. In all the signatures in the old records, or in the summons or in his signatures given in Court, Sohanpal writes the *matra O* of *so* in one continuous unbroken stroke and the upper curve is not so well-formed but somewhat clumsy. In the disputed signature, however, this *O matra* is divided into two parts, the upper part is a gracefully formed curve ending on the upper line covering the signature and the lower portion is a separate straight stroke going towards the bottom. This manner of writing the *matra O* has not been found in any of his other signatures.

The sum total of these considerations, therefore, comes to this, that out of the four letters in each of the two signatures, two letters in each generally agree, as

between the disputed and admitted signatures. So that the proportion of similarity and dissimilarity is 50 : 50. If we add to this the facts that the alleged writers acknowledge the signatures as their own, and independent witnesses also support them, then we shall see that the scale will weigh heavily in favour of the genuineness of the signatures. The only question remains, what would be the effect of the remaining discrepancies with regard to *da* in Dayachand's signature and *O matra* of so in Sohanpal's signature. The dissimilarity about the *da*'s in Dayachand is not so marked as that about the *O matra* in *so* in *Sonpal*. These small dissimilarities and divergences, however, are not sufficient for a finding that the signatures are not genuine. Whereas it is true that a forgery will at least in some measure be like the genuine writing, it is equally true that there is always bound to be some variation in the different examples of genuine writing by the same writer. It has been held that it would not be safe to rely solely on dissimilarity of signatures, where the dissimilarity is not of a general character, but merely in particular letters[8], for the slightest peculiarities of circumstance or position, as for instance, the writer sitting up or reclining or the paper being placed upon a harder or softer substance or on a place more or less inclined, as also, the materials, such as pen, ink etc. being different at different times, may lead to letters being written variously at different times by the same individual. Moreover, few individuals write so uniformly that dissimilar formations of particular letters are grounds for concluding them not to have been written by the same person. The respondent's Handwriting Expert (R.1/W.3) also admits that.

Osborn in Chapter XXVIII—"Errors in Identification of Handwriting"—of his well-known book "The Problem of Proof", has enumerated the principal causes of error in determining whether a handwriting is genuine or forged or in deciding whether a particular handwriting was or was not written by a certain writer. He has given 19 causes of such error—(a) to (s)—at page 478 of his book. Two of these causes of errors, according to him, are—"(b) basing conclusion on forms or designs of letters *alone* and (i) basing conclusion upon too limited amount of disputed writing or upon too limited amount of standard writing.

In the present case, the materials before us for comparison seem to me too limited. In the case of Dayachand we have got only one admitted signature to compare with, besides his signatures taken in Court. In the case of Sohanpal, we have of course several signatures to compare with, besides his signatures taken in Court. But with regard to none of the two, there is any other writing enabling one to ascertain the general characteristic of their writings. The signatures also consist of only four letters, which also are insufficient for the purpose. Comparison with signatures taken in court is also not a sure guide because a person may feign or alter the ordinary character of his writing with the very object of defeating a comparison or himself being nervous, characters may change automatically. Even so, with this insufficient and unsatisfactory materials, all that we get is that there is marked divergence only with regard to one *matra O* in Sohanpal, and some minor divergence with regard to one letter *da* in Dayachand. The other divergences can and have sufficiently been explained. Even taking all the discrepancies and divergences together, it has got to be noticed that they only relate to the forms or designs of one or two letters only, and, therefore, cannot form the basis of a definite and positive conclusion that the signatures are not genuine.

Keeping in view the trend of the decisions and authorities mentioned before, I find it difficult to accept the evidence and opinion of the Handwriting Expert produced by the contesting respondent, which are not supported by any other corroborating circumstances or evidence as sufficient to hold that the signatures are not genuine. I do not think it safe and proper to discard the direct evidence produced on behalf of the petitioner, which has not otherwise been assailed in any way, simply on the ground that there are some little divergences in some of the letters of the signatures, which, owing to the insufficiency of materials before us, according to all authorities, are not sure and conclusive guide for coming to a decision as to whether a writing is genuine or not. The position, therefore, is that the contesting respondent has failed to prove that there are adequate grounds for us to reject the direct evidence regarding the signatures in their entirety and rely on the absolutely uncorroborated evidence of his expert, and as such he has failed to prove that the signatures are not genuine. The issue, therefore, fails, and is answered in the negative.

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[8]A.I.R. 1925 Calcutta 485.

The issues in bar of the Election Petition (Issues Nos. 7 and 3) having failed, the substantive issues Nos. 1 and 2 now arise for consideration. On these issues I respectfully agree with the view taken by the learned Chairman and Member (Judicial), and have nothing further to add.

(Sd.) P. L. SHOME, *Member.*

BY THE TRIBUNAL,

The petition is allowed, and the election of respondent No. 1, Kr. Tej Singh, is declared to be void. The petitioner shall get his costs from the contesting respondent. Lawyer's fee Rs. 200, if the fee has been certified to Court before this order.

(Sd.) KUMAR K. SHARMA, *Chairman.*

(Sd.) A. N. KAUL, *Member.*

(Sd.) P. L. SHOME, *Member.*

ANNEXURE "A"

IN THE ELECTION TRIBUNAL, JAIPUR.

ELECTION PETITION NO. 12 OF 1952.

(Shri Lallu Chand *v.* Kr. Tej Singh and others)

Objection filed by respondent No. 1, Kr. Tej Singh, regarding the constitution of the Tribunal

PRESENT

The Hon'ble Mr. Justice K. K. Sharma, *Chairman.*

Mr. A. N. Kaul, *Member.*

Mr. P. L. Shome, *Member.*

Mr. C. L. Agrawal, and Mr. Sharma, Ramesh Chandra—*for Kr. Tej Singh, Objector.*

Mr. D. M. Bhandari and Mr. B. L. Luharia—*for the petition, Shri Lallu Chand.*

Mr. K. S. Hajela, Advocate General, Rajasthan.

ORDER

Dated the 21st January, 1953

BY THE TRIBUNAL (PER HON. MR. JUSTICE K. K. SHARMA)

An objection has been filed on behalf of the respondent No. 1 Kr. Tej Singh, (hereinafter to be referred to as the objector) that this Tribunal is not properly constituted under the provisions of section 86 of the Representation of the People Act, 1951, (hereinafter to be referred to as the Act). Mr. C. L. Agrawal, who appears for the objector, was asked to clarify on what ground it is said that the Tribunal is not properly constituted. He replied that the reason for the objection was that the Advocate Member of the Tribunal ought to have been taken from the list of advocates furnished by the Rajasthan High Court and not by any other High Court. As the Advocate Member of this Tribunal is not from the list furnished by the Rajasthan High Court, the Tribunal is not properly constituted. This objection was raised on the 5th of January, 1953, whereas the written statement of Mr. Tej Singh was filed on the 16th of December, 1952, in which no such objection was taken. As, however, the objection went to the very root, it was not considered proper to dismiss it on this ground, and the objector was allowed to press this objection, provided he paid Rs. 30/- as costs to the petitioner. The costs awarded to the petitioner have been paid.

We have heard Mr. C. L. Agrawal on behalf of the objector, and also Mr. D. M. Bhandari on behalf of the petitioner. In view of the importance of the question raised, the Advocate General of the State was also required to attend and have his say under section 89 of the Act at the time of the hearing of the objection. The learned Advocate General attended the Tribunal at the time of hearing. We have heard him also, and he supported the counsel for the petitioner who opposed the objection.

Before we proceed to deal with the arguments of the learned counsel we deem it proper to say for brevity's sake that a District Judge, who, according to sub-section (3) of section 86 of the Act, can be appointed either as a Chairman or as one of the other members, is to be referred to by the words "District Judge Chairman or member" as the case may be, and an advocate, who can be appointed

as another of the two other members by virtue of clause (b) of sub-section (3) of section 86 of the Act, is to be referred to as the "advocate member" in this Order. The constituency of which an election under the Act is called in question is to be referred to as "the constituency in question." The advocate, who comes from another High Court, is to be referred to as an "outsider advocate", and a District Judge of another State is likewise to be referred to as an "outsider District Judge".

It was argued on behalf of the objector that under sub-section (3) of section 86 of the Act, the Election Tribunal is to be composed of a Chairman and two other members. One of the two other members is required to be an advocate, who is to be selected from the list supplied by the High Court of the very State in which the constituency regarding which the election petition has been filed is situated, As the advocate member of this Tribunal has not been selected from the list supplied by the High Court of Rajasthan, but is an advocate of the Calcutta High Court, the Tribunal is not properly constituted. It was argued that in clause (b) of sub-section (3) the words used are "the list", and not "the lists" or "a list". Therefore, the Legislature intended that the advocate member, should come from the list of the High Court of the same State in which the constituency in question is situated. Anticipating arguments on behalf of the petitioner, it was argued that although in the first proviso to sub-section (3), it is laid down that no person who belongs to the judicial service of another State shall be selected for appointment as a member of the Tribunal except with the consent of the Government of the other State, in case the petition for the trial of which a Tribunal is to be appointed is in respect of an election to the Legislative Assembly or the Legislative Council of a State, yet this proviso cannot put words in the main enacting part, *viz.*, clause (b) of sub-section (3), which do not find place in it. The proviso is, therefore, of no help in interpreting clause (b). Even if the proviso were taken to control that part of clause (b) which deals with the selection of a judicial officer, its scope cannot be enlarged so as to control that part also which deals with the appointment of an advocate member. For this reliance was placed on the following cases as well as extracts from Craies on Statute Law, Fifth Edition, pages 201-202:—

1. The Guardians of the Poor of the West Derby Union V. The Metropolitan Life Assurance Society and others (1).
2. The King V. Dibdin, (2).
3. Mullins V. The Treasurer of the County of Surrey (3).
4. Madras and Southern Maharatta Ry. Co. Ltd. (4) V. Bezwada Municipality.

It was also argued that the word "list", which is in singular, and is preceded by the definite article "the" in contradistinction to the words "a judge of a High Court" in clause (a), clearly shows that in the case of a High Court judge, anybody who is or has been a judge of any High Court in India can be appointed, while in the case of an advocate as well as district judge, the Legislature by using the definite article "the" and the singular word "list" has made it clear that he would be selected from the list of the High Court of that State only in which the constituency in question is situated.

On behalf of the petitioner it was argued by Mr. D. M. Bhandari that the words used in section 86, sub-section (3), clauses (a) and (b), of the Act are quite general, and whether he be a District Judge or an advocate from the list of the High Court of the same State in which the constituency in question is situated, or from the list of any other High Court, he can be validly appointed as member of any Tribunal. It was argued that under sub-section (2) of section 86 of the Act, lists of District Judges and advocates are not obtained from any particular High Court but from the High Court of each State. Therefore, the words "the list maintained under clause (a) of sub-section (2)" mean the list of any of the High Courts, which have chosen to send it to the Election Commission. It was argued that if the District Judges and advocate members were to be taken from the list of the High Court of the same State within which the constituency in question is situated, it was not difficult for the Legislature to use limiting words clearly in sub-section (3). The fact that no restrictive words are used goes to show that the Election Commission can appoint a Chairman and one of the other members

(1) 1897 Appeal Cases 647.

(2) L.R. 1910 Probate Division 57.

(3) (1879-80) 5 Queen's Bench Division 170.

(4) A.I.R. (31) 1944 Privy Council 71.

from the list supplied by the High Court of any State under clause (a) of sub-section (2) irrespective of the fact whether the constituency in question is situated in that State or not, and similarly an advocate of any High Court may be appointed as the advocate member, provided his name finds place in the list obtained from any High Court under clause (b) of sub-section (2). It was further argued that in fact the Legislature intended that after the lists required by clauses (a) and (b) of sub-section (2) of section 86 are received by the Election Commission, it shall prepare two lists, one containing the names of District Judges and the other of advocates recommended by various High Courts. The singular word "list" preceded by the definite article "the" in clauses (a) and (b) of sub-section (3) refers to these two comprehensive lists prepared and maintained by the Election Commission. Even if at the worst it is assumed that the words are ambiguous, the words of the proviso first to sub-section (3) make the position quite clear. The law is it was contended, that the proviso can be made use of in order to clear any ambiguity which finds place in the main enacting part. For this reliance was placed upon Jennings and another V. Kelly (5). Support was also drawn from the observations in the very cases relied upon by the learned counsel for the objector, and from the extracts cited by the learned counsel from Craies on Statute Law. Our attention was also drawn to an extract in Maxwell on the Interpretation of Statutes, Eighth Edition, page 140.

The learned Advocate General, besides adopting the same arguments which were advanced by the learned counsel for the petitioner, referred to various sections of the Act in order to show that wherever it was intended that a certain provision is limited to any particular State, such intention has been clearly expressed. For this attention of the Tribunal was drawn to the wordings of sections 3, 5(c) and 6 (1) of the Act. Reliance was also placed upon the case of Province of Bombay V. Hormusji Manekji (6), in order to show that if there are any express exceptions from the operative part of a section, it may be assumed, unless it appeared otherwise from the language employed, that these exceptions were necessary, as otherwise the subject-matter of the exceptions would have come within the operative provisions of the section. From these observations of their Lordships of the Privy Council it was argued that the first proviso to sub-section (3) of section 86 of the Act was considered to be necessary by the Legislature because it thought that unless this proviso was incorporated, the words of clauses (a) and (b) of sub-section (3) of section 86 would entitle the Election Commission to appoint District Judges of the States other than the State in which the constituency in question is situated without the consent of the appropriate Government. Reliance was also placed on the observations of their Lordships of the Privy Council in the case of Kumar Kamalaranjan Roy V. Secretary of State (7) in order to show that the court is not entitled to put into an Act words which are not expressed, and which cannot be implied on any recognised principles of construction. It was argued that the restrictive words confining the selection from the list supplied by the High Court of the very State in which the constituency in question is situated cannot be imported into sub-section (3) when they are not expressly put in there.

We have considered the arguments advanced by the learned counsel for either party as well as those of the learned Advocate General. The objection of the learned counsel for the objector is based upon the wordings of section 86 of the Act. We, therefore, consider it necessary to quote sub-sections (1), (2) and (3), and the first proviso to sub-section (3), of section 86 of the Act in extenso. These are the only parts of section 86, which have bearing upon the question. They are as follows:—

"(1) If the petition is not dismissed under section 85, the Election Commission shall appoint an Election Tribunal for the trial of the petition.

(2) For the purpose of constituting such Tribunals the Election Commission shall obtain from the High Court of each State (other than Jammu and Kashmir)—

(a) a list of persons who are or have been district judges in the State and who are in the opinion of the High Court fit to be appointed as members of the Election Tribunals, and

(b) a list of advocates of that High Court who have been in practice for a period of not less than ten years and who are in the opinion of the High Court fit to be appointed as such members.

(5) L.R. 1940 Appeal Cases 206.

(6) L.R. LXXIV Indian Appeals 103.

(7) L.R. (1938-39) LXVI Indian Appeals 1.

and shall maintain the lists by making such alterations therein as the High Court may from time to time direct.

(3) Every Tribunal appointed under sub-section (1) shall consist of—

(a) a Chairman who shall be either a person who is or has been a judge of a High Court, or a person selected by the Election Commission from the list maintained by it under clause (a) of sub-section (2); and

(b) two other members of whom one shall be selected by the Election Commission from the list maintained under clause (a) of sub-section (2) and the other shall be selected by it from the list maintained under clause (b) of that sub-section:

Provided that where the petition for the trial of which a Tribunal is to be appointed is in respect of an election to the Legislative Assembly or the Legislative Council of a State, no person who belongs to the judicial service of another State shall be selected for appointment as a member of the Tribunal except with the consent of the Government of the other State:"

It is clear from the wordings of sub-section (1) that an Election Tribunal is to be appointed for the trial of each petition which is not dismissed under section 85 of the Act. Thus there would be as many Tribunals as there are petitions. The Election Tribunals appointed under sub-section (1) are not meant only for the trial of the petitions relating to the election of a constituency of a State Legislative Assembly or a State Legislative Council. They are for the trial of election petitions in relation to constituencies whether they be of the Legislative Assembly or the Legislative Council of a State or of either of the two houses of Parliament, that is, the House of People and the Council of States. The qualifications for the Chairman or any other member of the Tribunal, laid down in sub-section (3), are the same whether the Election Tribunal has been appointed for the trial of an election petition concerning the election of a constituency of the Legislative Assembly or Legislative Council of a State or of the House of People or Council of States. There are no words which limit the selection to the list of the High Court of that State only in which the constituency in question is situated. The lists, which are obtained under sub-section (2) are obtained not from any particular High Court but from the High Court of each State. Thus there are as many lists under clauses (a) and (b) of sub-section (2) as there are High Courts, which choose to send such lists. When, therefore, the words "the list" are used in sub-section (3), they refer to the lists sent by various High Courts under clauses (a) and (b), and not by any particular High Court. If the lists (a) and (b) were obtained from any particular High Court only, the use of the words "the list" in clause (a) or (b) of sub-section (3) might have meant the list obtained from that High Court only; but when there are a number of High Courts which have been desired to send the lists of their district judges and advocates who are in their opinion fit to be appointed as members of the Election Tribunals, it cannot be said that the use of the words "the list" shows that the list sent by the High Court of that State alone is meant in which lies the constituency in question. If the intention of the Legislature were that the district judges and advocates were to be selected from the list of the High Court of that State only in which the constituency in question is situated, there was nothing to prevent it from putting express words to that effect in clauses (a) and (b) of sub-section (3). We find from the use of the words "that State or in any of the States in that group" in sub-section (3) of section 3, and the words "that State" in clause (c) of section 5, and similar words in sub-section (1) of section 6 of the Act, the Legislature has not hesitated to use restrictive words expressly wherever it has intended that the choice should be restricted. In sub-section (3) of section 3 it is expressly provided that a representative of any Part C State or group of such States in the Council of States shall be an elector for a Parliamentary constituency in that State or in any of the States in that group, as the case may be. Similarly in clause (c) of section 5 it has been expressly laid down as a qualification for membership of the Legislative Assembly that a candidate must be an elector for any Assembly constituency in that State. In section 6 (1) the Legislature has clearly expressed that the qualification for membership of the Legislative Council of a State shall be that the candidate should be an elector for any Assembly constituency in that State. If the Legislature had intended that similar restriction should be put upon the selection of district judge or advocate members of the Tribunal or district judge Chairman of the Tribunal, words expressly indicating that intention would have been easily inserted in sub-section (3) of section 86. This intention could have been expressed by using different words, and only for

the sake of example we say that if there were such intention, it would have been expressly indicated by some such words as follows:—

1. In clause (a) of sub-section (3) the following words could have been used after the words "the list" in place of the present words:—

"obtained by it under clause (a) of sub-section (2) from the High Court of the State in which the constituency, in respect of which an election petition has been filed, is situated,"

2. In clause (b) of sub-section (3) similar words could have been used after the words "the list" instead of the present words in the first part, and the same words substituting clause (b) for (a) could have been used in the second part.

3. If it were meant to confine the selection from the list of the same High Court of the State in which the constituency in question is situated which only in the case of election petitions relating to an election to the State Legislative Assembly or Legislative Council, a proviso could have been added to the following effect:—

"Provided that in case an election petition, for the trial of which a Tribunal is to be appointed, is in respect of an election to the Legislative Assembly or the Legislative Council of a State, no advocate or district judge from the list of the High Court of another State shall be appointed as a member."

The above are only by way of example, and there could be many other ways in which the intention of the Legislature could have been indicated expressly, if it was desired to confine the selection to the list of the High Court of the same State in which the constituency in question was situated. None of any such ways has been adopted, and in the absence of any express words restricting the scope of selection, we are unable to put any such words in clauses (a) and (b) of sub-section (3). We are fortified in this view of ours by the observations of their Lordship of the Privy Council in the case of Kumar Kamalaranjan Roy V. Secretary of State (7), cited by the learned Advocate General, which show that the Court cannot put into an Act words which are not expressed and which cannot reasonably be implied on any recognised principles of construction. It has been already said that such express words are not used in sub-section (3). Even the learned counsel for the objector was not able to point out any such express words. The learned counsel has also been unable to show that such words can reasonably be implied on any recognised principles of construction. All that he argued was that the use of the word singular "list" with the definite article "the" clearly shows that the selection should be from the list of the High Court of that very State wherein the constituency in question is situated. As has been said above, lists (a) and (b) under sub-section (2) are not obtained from any particular High Court, but from all the High Courts which choose to send such lists in response to the request of the Election Commission. We are, therefore, unable to spell out any such intention on the part of the Legislature, as has been attributed to it by the learned counsel for the objector. Under section 13 of the General Clauses Act, which applies to the Act, as it is a Central Act, words in the singular include the plural and *vice versa*, unless there is anything repugnant in the subject or context. We find no such repugnancy in the present case, and so we would be doing no violence to the language of sub-section (3) if we read the word "list" to include the plural "lists". Once we read the singular word "list" to include the plural word "lists", there can remain no possible controversy. As there are as many lists under clauses (a) and (b) of sub-section (2) as there are High Courts which choose to send them, the plural word "lists" would clearly indicate that a very wide choice was given to the Election Commission in the selection of the Chairman as well as the other two members. Only the Election Commission was to choose district judges and advocate members from the lists received from any one of the High Courts. To our mind it is quite clear that the Legislature intended that for the Chairman of an Election Tribunal any district judge could be selected whose name finds place in list (a) of section 86(2) of any of the High Courts. Similarly, for the other two members, a district judge could be selected from the list (a) and an advocate could be selected from the list (b) of the High Court of any of the States. To our mind, even irrespective of the wordings of the first proviso to sub-section (3), the intention is clear that the choice is limited to lists (a) and (b) of any of the High Courts, and not to the lists of any particular High Court only.

It was argued by the learned counsel for the objector that from the fact that the words "a judge of a High Court or a person selected by the Election Commission from the list maintained by it under clause (a) of sub-section (2)" are used in clause (a) of sub-section (3), it is clear that the choice for the selection of a High Court Judge is unfettered whereas in the case of a district judge it is limited to the list of the particular High Court of the State in which the constituency in

question lies. In this argument also there is the same falacy as it is in the argument with respect to the personnel for the selection of two other members under clause (b) of sub-section (3). The list maintained under clause (a) cannot be taken to be the list of the High Court of the particular State only in which the constituency in question lies, for the same reason as the list maintained under clause (b), of sub-section (3) cannot be taken to be the list of the High Court of such particular State only. The words "a judge of a High Court" have been used because no restriction has been placed upon the selection of High Court Judges. Such words could not be used in connection with district judges under clause (a) or district judges or advocates under clause (b), because their selection is confined to the lists maintained by the Election Commission under clauses (a) and (b) of sub-section (2).

In coming to this interpretation of clauses (a) and (b) of sub-section (3) we have not considered it necessary to examine the question whether the lists maintained under clauses (a) and (b) of sub-section (2) are two lists only, one containing the names of the district judges of all the States who have been recommended by the High Courts of those States, and the other of the advocates of the High Courts of all such States, or there are two lists for each of the High Courts which have supplied lists in response to the request of the Election Commission. The reason is that even supposing that as many lists under clauses (a) and (b) are maintained by the Election Commission as there are High Courts which have chosen to send such lists, our interpretation of the words "the list maintained" in clauses (a) and (b) is "the list of any one of the High Courts of the States which has chosen to send such lists as required by clauses (a) and (b) of sub-section (2)".

As has been said above, even apart from the first proviso it is quite clear that whether he be a district judge or an advocate member, he can be selected from the list of the High Court of any State, irrespective of the fact where the constituency in question lies. If, however, any doubt is left, it is cleared by the words of the said proviso.

The learned counsel for the objector argued that the words of a proviso cannot be pressed into service for enlarging the scope of the main enacting part, when the words of the main enacting part are clear and unambiguous. For the purposes of this case even the learned counsel for the petitioner or the learned Advocate General has not considered it necessary to controvert this view, although it appears from certain extracts given in Chapter VII of Maxwell on the Interpretation of Statutes, Eighth Edition, page 139, that there are authorities to the contrary also wherein it has been laid down that when the proviso appended to the enacting part is repugnant to it, it unquestionably repeals the enacting part. However, we do not wish to examine those cases, as for the purposes of this case it is not necessary to find what will be the effect of a proviso which is repugnant to the clear and unambiguous words of the main enacting part. If the words in clauses (a) and (b) of sub-section (3) were clear and unambiguous, and showed that the selection was restricted to the lists of that State only in which the constituency in question is situated, then alone the question would have arisen whether the proviso first is repugnant to the main enacting part, and if so, what is its effect. But, as has been said above there are no such express words in the main enacting part, in the present case as would clearly and unequivocally show that the District Judge Chairman or District Judge or advocate member can be selected only from the list of the High Court of that State wherein the consituency in question is situated. Taking the view most favourable to the objector, all that can be said is that the words are not clear either to show one thing or the other. In that case it is legitimate to consider the language of the first proviso to clear the ambiguity which finds place in the main enacting part. Even the authorities cited by the learned counsel for the objector lay down that such a use of the proviso is legitimate. The fundamental rule of interpretation of statutes is that no part of it should be considered to be redundant, and so far as possible attempt should be made to reconcile one part of the same enactment with the other. Craies in his Statute Law, Fifth Edition, page 98, refers to the case of Ditcher V. Dansion ([8]), in which it was held that:

> "One who reads a legal document whether public or private, should not be prompt to ascribe—should not, without necessity or some sound reason, impute—to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use."

([8]) (1857), 11 Moore P.C. 325, 337.

There is another quotation by him on the same page from the case of Cowper-Essex V. Action L. B. [9], which runs as follows:—

> "The words of a statute never should in interpretation be added to or substracted from, without almost a necessity."

Of course, at page 100 he says that "as Court of law will reject words as surplusage if it appears that, by 'attempting to give a meaning to every word, we should have to make the Act of Parliament insensible', or if it is clear that otherwise the manifest intention of the Legislature will be defeated".

If we assume that the interpretation put by the learned counsel for the objector upon the words "the list" in clauses (a) and (b) of sub-section (3) is correct, the proviso becomes altogether redundant, because if the choice of district judges were limited to the list of the High Court of that State only wherein the constituency in question lies, there would be no necessity to obtain the consent of the local Government of another State from which the outsider district judge is intended to be selected. The reason why this proviso has been inserted is that the Legislature thought that but for it, by the general words of clauses (a) and (b) of sub-section (3) district judges of another State could have been appointed without the consent of the Government of such State. By the proviso it has been made clear that if the election petition for the trial of which a Tribunal is to be appointed is in respect of an election to the Legislative Assembly or the Legislative Council of a State, no person, who belongs to the judicial service of another State, shall be selected for appointment as Chairman or member of the Tribunal except with the consent of the Government of that State. As regards an outsider advocate no such consent is necessary, and, therefore, no such limiting words have been used in the proviso.

The authorities which have been cited by the learned counsel for the objector also support the arguments of the learned counsel for the petitioner and those of the learned Advocate General that if there is any ambiguity in the main enacting part, assistance can be sought for clearing that ambiguity from the words of the proviso, if any. In the case of the Guardians of the Poor of the West Derby Union V. The Metropolitan Life Assurance Society and others (1), in his speech it was observed by Lord Watson that

> "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso. When one regards the natural history and object of provisos, and the manner in which they find their way into Acts of Parliament, I think your Lordships would be adopting a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute, although I perfectly admit *that there may be and are many cases in which the terms of an intelligible proviso may throw considerable light upon the ambiguous import of statutory words.*" (Pages 652 and 653).

The portion italicized is significant. Similarly on page 655 Lord Herschell in his speech observed as follows:—

> "Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it; but to find in it an enacting provision which enables something to be done which is not to be found in the enactment itself on any reasonable construction of it, simply because otherwise the proviso would be meaningless and senseless, would, as I have said, be in the highest degree dangerous".

Their Lordships had to deal with the language of section 2 of the Poor Law Loans Act 1871, to which a proviso was appended. The exact words of the section and the proviso are not given in the report, but it appears that the main enacting part only provided for the consent of the local Government Board for the guardians of the poor to raise a loan in order to pay off a previous loan before the stipulated time. There were no words in the enacting part to show that the loan could be paid to the creditor against his will whether the loan was of a debt prior to the coming into force of the Act or after it came into force. In the proviso it was embodied that no such consent of the local Board could be sought for paying off a loan which was taken before the date of the

(9) (1889). 14 App. Cas. 153. 169.

Act coming into force. On the strength of the proviso it was argued on behalf of the guardians of the poor that they had the power to pay off the creditor before the stipulated time, if the loan was taken after the Act came into force. Their Lordships were of opinion that the main enacting part did not confer any such power, and, therefore, did not consider it proper to derive any such provisions by implication from the proviso. In the present case, it cannot be said that the main enacting part does not confer any power upon the Election Commission to appoint district judges or advocates of another State. The utmost that can be said is that there is an ambiguity as to whether the words "the list" mean the list of the High Court of that State only in which the constituency in question is situated or the list of any other High Court as well. To clear up this ambiguity, it is permissible even according to their Lordships, Lord Watson and Lord Herschell, that assistance be sought from the proviso.

In the case of Mullins V. The Treasurer of the County of Survey (3), cited by the learned counsel for the objector, the proviso was found to be altogether repugnant to the main enacting part, and, therefore, it was rejected. In the present case, as has been discussed above, there is no repugnancy between the proviso and the main enacting part, and the case cited above is, therefore, no authority for the view propounded by the learned counsel for the objector. It would be profitable to quote from this very authority that on page 173 it has been observed by Lush J. that "when one finds a proviso to the section, the natural presumption is that but for the proviso the enacting part of the section would have included the subject matter of the proviso".

In the case of Madras and Southern Mahratta Ry. Co. Ltd. V. Bezwada Municipality (4), the words of the main enacting part were quite clear and the general terms included resort to the method of taking a percentage of the capital value of the buildings to find out their gross annual rent. The proviso specifically laid down this mode for the purpose of some specified buildings. It was held that the proviso does not say that the method of arriving at annual value by taking a percentage of capital value is to be utilised only in the case of the classes of buildings to which the proviso relates. It was further held that the proviso left the generality of the substantive enactment in the sub-section unqualified except in so far as concerns the particular subjects to which the proviso relates. In the present case, the scope of the enacting part is not sought to be restricted by any words in the proviso. It is pressed into service only for the purpose of making the words of the main enacting part clear or, as we may say still more clear.

The learned counsel for the petitioner has cited a recent case decided by the House of Lords, *viz.*, Jennings and another V. Kelly (5). In that case section 9(c) of the Intoxicating Liquor Act (Northern Ireland) 1923 came in for interpretation. It ran as follows:—

> "Where, owing to an increase of not less than twenty-five per cent. of the population according to the last census, there is a growth or an extension of any city or town, and the licensing authority is satisfied, after hearing any evidence tendered to it by any resident or owner of property in such city or town, that the restrictions in this section on the granting of licences may be relaxed, the licensing authority may grant a licence to any applicant notwithstanding that the same would be otherwise forbidden by this section".

In the said provision, the words used were general, that is, "owing to an increase of not less than twenty-five per cent. of the population". They were not qualified by any further words such as of a town or of any ward or district electoral division. The following provision, was, however, made by the proviso:—

> "Provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place, and in substitution for at least two existing licences held in respect of premises situate within the city or town (as the case may be) comprising such ward or district electoral division".

In the proviso the words "ward or district electoral division" were qualified by the words "in which such increase in population has taken place". Their Lordships did not hesitate to take the help of the proviso in interpreting the general words of the main enacting part, and it was held that for obtaining a licence under section 9(c) it was not necessary that there should have been an increase of not less than 25 per cent. of the population of the town along with

such an increase in the population of the ward or district electoral division for which licence was prayed for, but that it was enough that such increase should have taken place only in the population of such ward or district electoral division for which licence was prayed for, but that it was enough that such increase should have taken place in the population of such ward or district electoral division. Lord Bright in his speech laid down a very salutary principle, which is as follows:—

> "The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest." (page 239).

Viscount Maugham observed as follows:—

> "We must now come to the proviso, for there is, I think, no doubt that in the construction of the section the whole of it must be read and a consistent meaning if possible given to every part of it". (P. 216).

Lord Russel of Killowen says on page 220:—

> "Section 9(c) seems to me a case in which the proviso tells you expressly in what sense you are to understand the preceding words "an increase of not less than 25 per cent. of the population according to the last census". Until the proviso is read it is not clear where the increase is to take place. Must there be a 25 per cent. increase in the population of the whole city or town, or will it suffice if there is a 25 per cent. increase in the population of some defined part of the city or town? The words preceding the proviso would *prima facie* point to the former view. One must, however, read the whole clause before attempting to construe any portion of it; and a perusal of the proviso fixes the meaning of the words which precede it".

Thus, the help of the proviso was considered necessary in order to clear the meaning of the general term "growth of population". This is a much later decision than the decision of the House of Lords in the case of the Guardians of the Poor of the West Derby Union V. The Metropolitan Life Assurance Society and others (1) relied on by the learned counsel for the objector, and no later case has been shown in which this method of construing a particular section of an Act has been considered to be erroneous. Maxwell on the Interpretation of Statutes, Eighth Edition, page 140, has given the following principle:—

> "The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together, is to prevail".

The same principle is given in Craies on Statute Law, Fifth Edition, page 204, and it has been observed by the learned author that this would be held by the English courts at the present day to be good law. To our mind this is the correct principle, and should be normally applied. In the present case we do not find any exceptional circumstances to depart from this normal principle.

It was contended by the learned counsel for the objector that even if the proviso implies that district judges of other states could be selected for a Tribunal appointed for the trial of an election petition relating to a constituency in a different State, no such intention can be implied in respect of advocates. The answer to this argument is that the words used in clause (b) of sub-section (3) in respect of both the district judges as well as the advocates are the same, that is the words "the list maintained" are used in the case of both. Of course, in relation to district judges the words used after the word "maintained" are "under clause (a)" and in relation to advocates they are "under clause (b)", but that does not make any difference. If the interpretation of the words "the list maintained under clause (a) of sub-section (2)" is the list of the High Court of any one of the States, the same interpretation should be put upon the words "the list" in connection with advocates; because unless there is anything to the contrary in the subject or context, it is to be presumed that the Legislature has used the same words in the same sense in the same sub-division of a section. The same words as are used in relation to district judges in clause (b) are used in clause (a) of sub-section (3), and when a straight question was put to the learned counsel for the objector, whether it was also his argument that if a district judge is selected as a Chairman, he should be from the list of the High Court of the same State in which the constituency in question lies, he was for some time without any answer; but afterwards considering that it would be illogical to say that the meaning of the words "the list"

in clause (a) is not the same as the meaning of the same term in clause (b), he had to answer that even in the case of District Judge Chairman, he should be from the list of the High Court of the same State in which the constituency in question is situated. For the reasons given above; however, this interpretation is untenable.

We may add that the meanings sought to be given to the words of sub-sections (2) and (3) of section 86 of the Act by Mr. Agrawal are unreasonable inasmuch as, if accepted, they are likely to defeat the very object of a judicious selection of Members of Election Tribunals by the Election Commission, and may sometimes make it impossible for the Election Commission to appoint a Tribunal. It is a well accepted principle of interpretation of statutes that in determining either the general object of the Legislature or the meaning of its language in any particular passage, the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one, although it is also true that a court of law has nothing to do with the reasonableness or unreasonableness of a statutory provision except in so far as it may help in interpreting what the Legislature has said. The principle has been stated by Maxwell at page 169 of the Eighth Edition of his "Interpretation of Statutes". Now, according to Mr. Agrawal's interpretation of sub-sections (2) and (3) a district judge or even a district judge Chairman can only be selected from the list obtained from the High Court of the State in which the constituency in question is situated. This obviously would be a very unreasonable and unnatural restriction on the choice of members. We find ourselves unable to attribute to the Legislature the unreasonable intention to rule out an advocate member from another State who, in the very nature of things, is more likely to be free from any local attachments or associations. Moreover, there may be a State in which advocates fulfilling the prescribed qualification may not be available, and in which the High Court of the State may not be able to furnish any list of eligible advocates. The Legislature could not have intended to rule out the appointment of an outsider advocate member in such cases. In the circumstances, we cannot but adopt the more reasonable interpretation of sub-section (3), already indicated, even if there be any doubt as to the meaning of the words of the sub-section. And that interpretation can only be the one to which the clear intention of the first proviso to sub-section (3) unmistakably points.

On a careful reading of sub-sections (1), (2), and (3) along with the first proviso to sub-section (3), we are of opinion that whether it be a district judge Chairman or a district judge or advocate member of an Election Tribunal, selection can be made from the lists of the High Court of any State under clauses (a) and (b) of sub-section (3), and not from the list of that High Court only in which the constituency in question is situated.

Mr. Agrawal towards the fag-end of his arguments said that, even if the proviso were pressed into service, the constitution of this Tribunal will be improper inasmuch as both the district judge and the advocate members should be from the one and the same State. This objection was not taken in the written objection filed by him, but even so, we have considered it, and have no hesitation in saying that it has no force. According to Mr. Agrawal's latest interpretation, the district judge, if he is a Chairman of the Tribunal, as well as the district judge and advocate members thereof should be taken from the same State. If, for example, a district judge Chairman is taken from the list of the High Court of Assam for a Tribunal in Rajasthan, the Chairman as well as both the other members should be taken from the list of the Assam High Court. Before such an unreasonable intention is attributed to the Legislature, we should find some very clear words in section 86. If this were the intention, the Legislature would not have hesitated to use the words "from the list of the same High Court" in clause (b) and add a proviso to the effect that if the Chairman is a district judge he should also be selected from the list of the same High Court. These words or such other words are conspicuous by their absence in sub-section (3). We are not convinced by any of the arguments advanced by the learned counsel for the objector in order to show that this Tribunal is not properly constituted.

Before closing, we may say that we found Mr. C. L. Agrawal somewhat apologetic in pressing his objection, and he said more than once that he had no grievance against any particular member of this Tribunal. We are sure that Mr. Agrawal has none, and that it is his *bona fide* interpretation of section 86 of the Act, which prompted him to raise the objection. As a leading lawyer it was not

only permissible for him to raise this objection, but it was his duty to raise it when he believed in good faith that the Tribunal was not properly constituted.

The objection is overruled.

(Sd.) KUMAR K. SHARMA, *Chairman.*
(Sd.) ANAND NARAIN KAUL, *Member.*
(Sd.) P. L. SHOME, *Member*

[No. 19/280/52-Elec.-III/5749.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

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